REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 183] NEW DELHI, TUESDAY, AUGUST 24, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st July 1954

S.R.O. 2737.—Whereas the election of Shri Vasant Rao and Shri Durga Shankar Mehta, as members of the Legislative Assembly of the State of Madhya Pradesh from the Lakhnadon constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Raghurajsingh, village Khairi, Tahsil Lakhnadon, District Chhindwara, Madhya Pradesh;

And whereas, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

On an appeal filed by Shri Durga Shankar the Supreme Court has set aside the said Order of the Tribunal to the extent that it declares the election of Shri Durga Shankar Mehta to the Legislative Assembly of Madhya Pradesh from the Lakhnadon Legislative Assembly constituency to be void *vide* the Supreme Court's judgment, dated the 19th May, 1954 (Annexure I).

BEFORE THE ELECTION TRIBUNAL JABALPUR, AT NAGPUR

PRESENT:

1. Shri N. H. Mujumdar, B.Sc., LL.B.—*Chairman.*
2. Shri G. A. Phadke, B.A., LL.B.—*Member.*
3. Shri M. M. Mullna, M.A., B.L., Advocate—*Member.*

ELECTION PETITION No. 1 OF 1952

1. Thakur Raghurajsingh, s/o Thakur Churamansingh of Kheri, tahsil Lakhnadon, district Chhindwara—*Petitioner.*

Versus

1. Shri Vasant Rao, s/o Mangroo,
2. Hon'ble Shri Durga Shankar Mehta, s/o Shri Kripashankar Mehta,
3. Shri Gendlal, s/o Sardarilal,
4. Shri Kamalsi, s/o Barjori,
5. Shri Shiwanath Singh, s/o Churaman Singh,
6. Shri Tilok Singh, s/o Shri Jangi,
7. Shri Dayashankar, s/o Shri Hukum Chand—*Respondents.*

ORDER

(*Delivered this 30th day of April*, 1953.)

(1) This is a petition under section 81 of the Representation of the People Act, 1951 in which the peittioner has asked for the following reliefs:—

1. The election held on 29th December 1951 for Lakhnadon Legislative Assembly Constituency, which is a double number constituency, be declared wholly void;

Or, in the alternative;

2. The election of respondent No. 1 Shri Vasant Rao be declared void, or/ and

The election of respondent No. 2 Hon'ble Shri Durga Shankar Mehta be declared void;

3. The petitioner be awarded his costs;

AND

4. Such further orders as this Tribunal may deem fit to be made.

(2) The petitioner and the respondents were admittedly duly nominated candidates for the election. The Lakhnadon Legislative Assembly Constituency has two seats, one of which is reserved for the scheduled tribes. The respondent No. 1 Shri Vasant Rao, respondent No. 4 Shri Kamalsi and respondent No. 6 Shri Tilok Singh claimed to be qualified to be chosen to fill the reserved seat. After the nomination, the respondent No. 5 Shri Shiwanath Singh, respondent No. 6 Shri Tilok Singh and respondent No. 7 Shri Dayashankar withdrew their candidature in the manner prescribed by law, and others contested the elections. The respondent No. 1 Shri Vasantrao and respondent No. 2 the Hon'ble Shri Durga Shankar Mehta were declared duly elected to fill the reserved and the general seats respectively. The result of the election was published in Madhya Pradesh Gazette of Friday, the 8th February 1952.

(3) The number of votes obtained by the candidates were as follows:—

1. Shri Vasant Rao, respondent No. 1	14,442.
2. The Hon'ble Shri Durga Shankar Mehta, respondent No. 2 ..	16,621.
3. Shri Gendlal, respondent No. 3	6,604.
4. Shri Kamalsi, respondent No. 4	7,877.
5. Shri Raghurajsingh, the petitioner	7,811.

(4) The petitioner contends that the respondent No. 1 Shri Vasant Rao was less than 25 years of age at all material times and was not qualified to be chosen to fill a seat in the Legislative Assembly of the State of Madhya Pradesh; that his nomination was, therefore, improperly accepted; that the whole result of the election is of necessity, therefore, materially affected by the improper acceptance of the nomination of the respondent No. 1 Shri Vasantrao and that the election held on 29th December 1951 must, therefore, be held to be wholly void.

(5) The petitioner also contended that the election was also wholly void inasmuch as the election had not been a free election, because the corrupt practice of bribery and undue influence prevailed at the election. As instances of corrupt practice and undue influence, it was stated that the respondent No. 2 used the State car during the election campaign and utilized the services of his shorthand-typist, and also of several persons who were in the service of the Government of Madhya Pradesh, as Panchas of Nyaya Panchayats, Patels, Mukaddams, school teachers, patwaris and others, for the furtherance of his and respondent No. 1's prospects in the election. It was also contended that the election had not been a free election by reason that coercion and intimidation had been exercised or resorted to by the Congress Party, to which the respondents Nos. 1 and 2 belong, on the electors of the Islamic faith. It was further contended that the respondents Nos. 1 and 2 or their agents or other persons, with their connivance, made false representations by exhibition of posters, resorted to appeal to national symbols, and to systematic communal appeal and to the issue of posters with undisclosed publishers and were thus guilty of major and minor corrupt practices; that the result of the election had been materially affected; and that their election was, therefore, liable to be declared void.

(6) The respondents denied the allegations made by the petitioner and the following issues were framed for the trial of the election petition:—

Issues	*Findings*
1. (a) Was Respondent No. 1, Vasant Rao, less or more than 25 years of age on the date of the filing of the nomination paper? ..	Less than 25 years of age.
(b) If less, was the nomination of Respondent No. 1 improperly accepted by the Returning Officer? ..	Yes.
(c) If so, has the improper acceptance materially affected the result of the election? ..	Yes.
Can it affect the election of respondent 2? ..	Yes.
(d) Is the Petitioner now estopped from raising the question of the minority of Vasant Rao since he had failed to raise the question at the time of the scrutiny of the nomination papers? ..	No.
2. (a) (i) Had the Government of Madhya Pradesh liberalised the rights of villagers to Nistar, ..	Yes, but before the nomination.
(ii) foresworn their right to preempt holdings or collect consent money, ..	Yes.
(iii) notified their willingness to divest themselves without consideration of substantial portions of the grass lands which had become vested in the Government, after the nominations and before the voting in the Constituency was started? ..	Yes.
(b) Had the Respondent No. 2 Hon'ble Shri Durga Shankar Mehta declared in public meetings at Ghansor on 30th November 1951, at Chamari on 2nd December 1951, at Baheria on 4th December 1951, at Lurgi on 26th December 1951 and at Ganeshganj on 27th December 1951, that the credit for making these concessions was entirely due to the Cabinet of which he was a Member? ..	Yes.
(c) Were large number of copies of the following pamphlets distributed between 19th to 29th December 1951:— ..	Yes.
(i) Press Note of the Government of Madhya Pradesh, dated 27th December 1951 (Ex. A).	
(ii) Pamphlet, dated 19th December 1951 signed by Shri K. P. Tiwari, Additional Deputy Commissioner, Seoni (Ex. B.),	
(iii) Was wide publicity given to Government Notification No. 1033-XXVIII, dated 20th December 1951?	

(iv) Was wide publicity given to the decisions of the Madhya Pradesh Government by employing Government servants to broadcast them at Government expense?	
(d) Whether all or any of the acts mentioned in paras. 2(a), 2(b) and 2(c) amount to bribery or an attempt to bribe the electorate on such an extensive scale that the election held on 29th December 1951 as not been a free election? ..	It did not amount to bribery or attempt to bribe.
3. (a) Had Respondent No. 2 Shri Mehta employed the services of Shri J. S. Shukla, an employ of the Madhya Pradesh Government for furthering his (Hon'ble Shri Mehta's) prospects in the election? ..	He employed services but that was not for furthering his prospects in the election.
(b) Whether the employment of Shri J. S. Shukla or use of Government car C.P.Y. 2 or 3 and occupation of the entire Rest House at Lakhnadon had the natural effect of undue influence being exercised upon the electorate? ..	No.
4. (a) (i) Whether the persons (28 in number) mentioned in para. 10(b) of the Petition, were Panchas of the village Nyaya Panchayats as shown in the said paragraph?	Yes, except Prabhatgir.
(ii) Whether all or any of them had worked for the Respondent Nos. 1 and 2 in the Constituency? ..	See paragraph 34.
(b) (i) Whether the persons (19 in number) named in para. 10(c) of the Petition, were Patels or Mukaddams of villages shown against their respective names? ..	See paragraph 36.
(ii) Whether all or any of them had worked for the Respondent Nos. 1 and 2 in the Constituency? ..	See paragraph 36.
(c) (i) Whether the three persons named in paragraph 10(d) of the Petition were School Teachers employed by the Janpad Sabhas, Seoni and Lakhnadon? ..	Yes.
(ii) Whether all or any of them had worked for the Respondents 1 and 2 in the Constituency? ..	No.
(d) (i) Whether the four persons named in paragraph 10(c) of the Petition (Shri Barelal, Shri Laxmiprasad, Shri Roshanlal, Shri Tarachand) were Patwaris of villages shown against their respective names? ..	Shri Laxmiprasad was and others not proved.

(ii) Whether all or any of them had worked for Respondents 1 and 2 in the Constituency? ..	No.
(e) Whether Lolan was the village watchman of Bhimgarh? Did he work for the Respondents 1 and 2 on 23rd December 1951 at Bhimgarh? ..	No.
(f) (i) Did the then Sub-Inspector of Police Dhanora work for Respondents Nos. 1 and 2? ..	No.
(ii) Did the said Sub-Inspector give out a threat to Shri Khemkaran of Balliwara that Shri Khemkaran's house might be burgled as anti-Congress persons frequently went to his house? ..	No.
(iii) Did the said Sub-Inspector scold Shri Hari Prashad of Bamhori and Shri Subbe Pradhan of Lawe Sarrah for working against the Congress? Did he give them a threat of arrest in case they continued to work against the Congress? ..	No.
(g) Whether all or any of the facts mentioned in paragraphs 4(a) to 4(f) above, amount to the exercise of undue influence, coercion, or intimidation on the electorate on a scale so extensive that the election held on 29th December 1951 has not been a free election? ..	No.
5. (a) Did Seth Govind Das, President, Mahakoshal Provincial Congress Committee declare in his public speech at Chapara on 7th December 1951 that the lives and property of Musalmans in India were saved and protected by the Congress and the Muslims will have to go to Pakistan if they do not vote for the Congress candidates? .	No.
(b) Does the above declaration by Shri Govind Das amount to the exercise of coercion and intimidation on electorate of the Islamic faith? ..	Does not arise.
6. (a) Had Respondent Nos. 1 and 2 appointed themselves as their own election agents?	Yes.
(b) Whether Chhotelal, Sakharam, Chimatkar Singh, Majid Khan, Mohansingh and Shri Krishna Selot, appointed at all times material, Patels under the Madhya Pradesh Abolition of Proprietary Rights Act (I of 1951)? ..	Yes as regards Sakharam, Majidkhan, Chhotelal and Mohansingh. No as regards others.
(i) Were they serving under the Government of the State of Madhya Pradesh? ..	Yes only the four mentioned above.

(ii) Were they appointed Polling Agents at places noted against their respective names? ..	Yes some of them. See paragraph 48.
(c) Did Shri Krishna Selot, a Patel, arrange public meetings in support of the candidature of Respondents Nos. 1 and 2 and did he address a public meeting at Mangwari on 5th December 1951 in support of the Respondents 1 and 2? ..	Yes.
(d) (i) Whether Shri Indrajit, Ratanchand and Mahadeo Seth were Patels at all times material? ..	See paragraph 50.
Were they serving under the Government of the State of Madhya Pradesh? ..	See paragraph 50.
(ii) Did they organise public meetings at Lurgi on 26th December 1951 in support of Respondents 1 and 2? ..	See paragraph 51.
(e) (i) Did Vinod Prasad of Mangwani, a Patel, preside over the meeting at Ganeshganj on 27th December 1951 and seek support for respondents 1 and 2? ..	First part, yes. Second part—He indicated his support to speakers who exhorted the audience to vote for respondents 1 and 2.
(ii) Did Bansilal Barai, Panch, Nyaya Panchayat, Chapara, convene a meeting on 2nd December 1951 at Chapara and organize another meeting at Lurgi on 26th December 1951 with a view to seek support for the respondents 1 and 2? ..	First part, Yes. Second part, No.
(f) Whether the persons (12 in number) named in paragraph 12(d) of the Petition, were Panchas of the Nyaya Panchayats and whether they were appointed his Polling Agents by the Respondent No. 2? ..	Yes, except Prabhatgir.
(g) Whether the persons named in paragraph 12(d) of the Petition and Bansilal Barai, Pancha Nyaya Panchayat, Chapara, and Vinod Prasad, Sarpanch, Nyaya Panchayat, Mongwani, worked and canvassed for the respondents 1 and 2? ..	Bansilal convened a meeting and Umrao Prashad presided over it.
(h) Whether all or any of the acts mentioned in paragraphs 6(a) to (g) amount to illegal and corrupt practices as defined in Section 123 of the Act? ..	See paragraphs No. 56 to 60.

(i) Whether the persons mentioned above worked at the instance or with the connivance of respondents 1 and 2 as their agents? See paragraph No. 62.

7. (a) (i) Whether the persons (9 in number) mentioned in paragraph 13(a) of the Petition were Patels at all times material? .. See paragraph 63.

(ii) Did all or any of them work with the consent of Respondents 1 and 2 for furthering the prospects of the election of Respondents 1 and 2? .. See paragraph 63.

(b) (i) Whether the persons (13 in number) named in paragraph 13(b) of the Petition, were Panchas of the Nyaya Panchayat at all times material? See paragraph 64.

(ii) Did all or any of them work with the connivance of Respondents 1 and 2 furthering the prospects of the election of Respondents 1 and 2? See paragraph 64.

8. (a) Whether the Poster, Ex. C, containing Mahatma Gandhi's photograph and a ladder means to convey a statement that Mahatma Gandhi had sponsored the candidature of the Congress candidates (in this case Respondents 1 and 2) and that he (Mahatma Gandhi) disapproved of the candidature of the petitioner? .. No.

(b) Whether the said posters (Ex. C) were prepared, distributed and exhibited by Shri R. G. Upghade, Secretary, District Council, Seoni, and by the agents of Respondents 1 and 2? .. Yes.

(c) Whether the publication of the Poster (Ex. C) amounts to making a statement which is false and which the Respondents 1 and 2 either believed to be false or did not believe to be true in relation to the conduct of the petitioner being a statement reasonably calculated to prejudice the prospects of the Petitioner's election? .. No.

(d) Does the publication of the Posters amount to a systematic appeal to vote on grounds of *National Symbols*? .. No.

9. (a) Did Respondent No. 2 make a statement in the public meeting at Ghansore on 30th November 1951 to the effect that the Petitioner, if elected, will try to restore Malguzari and will join hands with other members who will make such attempt? No.

(b) Was the above statement repeated and given wide publicity by Respondent No. 1 on 28th December 1951 and by their Agents Kanhaiyalal Tantuwaya, Kanhaiyalal Tiwari, Bhagwandas Nigam and Radhelal Sharma with the connivance of Respondents 1 and 2? .. No.

(c) Was the above statement false and believed by the respondents or their agents either to false or not true and was it reasonably calculated to prejudice the prospects of the Petitioner's election? ..	Does not arise.
10. (a) Did Hon'ble Shri Mehta write the letter, dated 21st September 1951? ..	Yes.
(b) Did Hon'ble Shri Mehta tell the Petitioner's father on 30th November 1951 in the Circuit House, Seoni, that if the Petitioner did not stand as a candidate, he would be amply rewarded? ..	No.
(c) Did Babulal of Nagpur and Ramji Bhai of Chhindwara write the letters, dated 16th November 1951 and 27th September 1951 to the Petitioner's father? ..	Yes.
Were they written at the instance or with the consent of the Respondent No. 2?	Ramjibhai was authorized and Babulal was not.
(d) Had the Respondent No. 2 attempted to use the influence of Shri P. L. Bhargawa, Bar-at-Law, Seoni, for influencing the Petitioner not to exercise his right to stand for election? ..	No.
11. Whether the procedure adopted by the Congress party for election of candidates [as stated in paragraph 16(c)] is tantamount to bribery?	No.
12. (a) Whether Respondent No. 2 with his influence in the Mahakoshal Congress Parliamentary Board, secured the rejection of the candidature of Shri Lekheshwar Prashad Tiwari and Shri K. L. Tiwari?	No.
(b) Whether Respondent No. 2 entertained influential voters with sweets on 26th November 1951 at Lurgi? ..	No.
(c) Whether Chowdhary Ganga Prasad agent of Respondent No. 2 entertained influential voters with sweets at Ganeshganj on 27th December 1951 in the presence of Respondent No. 2? ..	No.
(d) Did Shri R. G. Upghade, Agent of Respondent No. 2, pay a sum of Rs. 30 to one Jawaharlal on 27th December 1951 at Bandol and promised to pay Rs. 20 more to vote and procure votes for Respondent No. 2? ..	No.
13. (a) Was systematic appeal to vote made to Gond voters through the Offices of the Gond Mahasabha and the Gond Mahasabha President Shri Mangroo, the father of the Respondent No. 1, that they should vote for the Congress candidate? ..	Yes.

(b) Does it amount to a systematic appeal to vote on grounds of community? ..	No.
14. Was the pamphlet (1) widely distributed throughout the Constituency? ..	Yes.
(b) Were copies of the pamphlets E and F freely distributed throughout the Constituency and was systematic appeal to vote made thereby on grounds of community?	First part, Yes. Second part, No
15. Whether the ballot boxes did not conform to the requirements of law? ..	They did.
Could ballot papers be withdrawn from them without the box being unlocked or seals broken? ..	No.
16. Whether adequate arrangements were not made for safe custody of ballot boxes or other papers either the place of polling after the Polling was over or during transit or at Seoni? ..	Not proved.
17. Had the Respondent 2 and his agents taken all reasonable means for preventing the commission of corrupt or illegal practices?	Yes.
18. Whether the alleged corrupt and illegal practices have materially affected the election of respondent 1 or 2 or of both? ..	No.

REASONS FOR THE FINDINGS

(7) Though a very large number of issues have been framed, the points in controversy can be reduced to the following:—

I. Whether the Respondent No. 1 was less than 25 years of age and was, therefore, not qualified to be chosen to fill a seat in the legislature of the State and was the acceptance of his nomination paper, therefore, improper and has materially affected the result of the election?

II. Whether the corrupt and illegal practices were resorted to as alleged (*vide* issues 2 to 14) and have they materially affected the result of the election?

(8) I shall first deal with the issues 2, 3, 5, 8, and 9 to 17 and then deal with the remaining issues.

(9) *Issues Nos.* 2(*a*)(*i*), (*ii*), (*iii*), (*b*), (*c*) *and* (*d*).—It is clear, the acts complained of (to which these issues refer) were not done by the respondent No. 2 alone. These acts were done in consequence of the decision taken by the Cabinet of which the Respondent No. 2 was a member. The Council of Ministers of Madhya Pradesh granted certain rights and gave certain concessions to the agriculturists in the rural areas. The Government is expected to look after public welfare, and if they, therefore, gave certain rights or concessions to the agriculturists in rural areas, it cannot be said that that was "a gift or offer or any gratification to any person, whosoever, with the object, directly or indirectly, of inducing an elector to vote in favour of a certain candidate". It is alleged that these rights or concessions were given after the nominations and before the Constituency went to the poll. This, however, does not appear to be true, for it would appear from Ex. P-31 that orders relating to NISTAR rights had already been issued about the middle of June 1951. It appears that after nominations and before the Constituency went to the poll, Government announced their decision not to collect consent money; but that could hardly be considered as any gift or offer or promise by the respondent No. 2 himself or by his agent or any other person with his connivance. It was the decision of the Government, and the concessions were given in pursuance of such decision. The respondent 1 could not be held to be

guilty of corrupt practice of bribery as alleged by the petitioner. I doubt if rights or concessions given to the agriculturists in rural areas could be considered as gratification.

(10) It has not been contended that the respondent No. 2 claimed any credit for himself for the concessions or rights granted to the agriculturists. It is alleged that in public meetings he gave out that the credit for making these concessions was entirely due to the Cabinet of which he was a member. If he gave it out, he only said what was a fact; I do not think any candidate is precluded under law from placing before the electors the services rendered by him to them or to the country. It appears that pamphlets like Exs. P-31 and P-37 were distributed—broadcast by Government through the Government servants. I do not see that there was anything wrong in doing it. In fact, it appears to me that it was the duty of Government to give wide publicity to the rights or concessions given by them to the people in the rural areas. In my opinion, these acts would not amount to bribery or an attempt to bribe. I find, therefore, in the affirmative on issues 2(a) (i), 2(a) (ii), 2(a) (iii), 2(b), and 2(c), but as regards issue No. 2(a) (i) I hold that the rights of villagers to NISTAR had been liberalised not after nominations and before the poll was taken but long before nomination papers were submitted to the Returning Officer.

(11) *Issues Nos. 3(a) and (b).*—It was alleged that the Respondent No. 2 had used the services of his Shorthand-typist, Shri J. S. Shukul, an employee of the Madhya Pradesh Government, for furthering his prospects in the election. It was also alleged that the use of the Government car by the Respondent No. 2 and the occupation of the entire rest houses at Lakhnadon and Chhapara during the election campaign had the effect of exercising undue influence upon the electorate. The Respondent No. 2 did occupy the rest houses while he was on tour during the course of his election campaign, but the story that is given out by the petitioner in his evidence, *viz.*, that he could not find accommodation in the rest houses, does not appear to be true, for it would appear from his evidence that at Chhapara he never needed accommodation in the rest house either for himself (or any of his agents) as he had his own house where he used to keep his shop at that place. It also appears that the story that he needed accommodation in the rest house at Lakhnadon is also not true, for he never had applied for reservation of rooms in either Chhapara or Lakhnadon rest house.

(12) The Respondent No. 2 admitted that he had used the services of his Shorthand-typist for the mechanical part of his private as well as public correspondence. He admitted Ex. 2R5 was typed out by his Shorthand-typist Jayashankar Shukul. But that would not amount to assistance for furtherance of the prospects of the candidate's election. The contents of Ex. 2R5 would show that instructions were sent out by the respondent No. 2 to his agents not to allow certain persons to work for him. I do not understand how these instructions could further the prospects of the respondent No. 2 in his election. I am, therefore, unable to hold that the services rendered by Jayashankar Shukul were in furtherance of the prospects of the respondent No. 2 in the election. I find on issue No. 3(a) in the negative. Nor am I prepared to hold that the use of the Shorthand-typist for getting typed this letter would have any effect on the electorate, much less could it amount to undue influence.

(13) It appears from the provisions of the Ministers' Salaries Act, that every Minister is supplied with a car for his official use. It is clear from the evidence of respondent No. 2 that he had to dispose of Government work while he was on tour in connection with his election campaign. As he continued to be a Minister during the election campaign, it could not be expected that he could divest himself of his character as a Minister while he was on election tour. It could not, therefore, be said that the use of the State car or the Rest Houses or Circuit House by him for his residence during the election campaign was wrong or unjustified. I am not prepared to believe that the use of the car or the Circuit Houses or the Rest Houses could have influenced the voters in any way.

(14) There is no doubt that there is considerable ignorance amongst the people residing in rural areas. But the last elections have shown that the people are not altogether unaware of the changes that have overtaken the country during the last 10 years. The last elections have also shown that even people in rural areas are fully conscious of the enlarged franchise introduced by the Constitution of this country, and they are not so ignorant as to be influenced by the use of a Government car by a Minister or the occupation of Circuit House or Rest House by him. These can hardly have any influence on a voter, much less can it have undue influence on him. I find in the negative on issues 3(a) and (b).

(15) *Issue No. 8(a) and (b).*—The poster, Ex. P-45, appeals to the voters to vote for the Congress. It shows Mahatma Gandhi, the father of the nation, with folded hands. According to the petitioners, this was intended to show to the

voters that Mahatma Gandhi with folded hands had been asking for their votes for the Congress candidate. It cannot be disputed that Mahatma Gandhi was for a long time the leader of this organisation. But it is common knowledge that in the later years he had severed his connection with the Congress, though the leading members of this organization often approached him for advice, as did the leading members in several other organizations. Many organizations in the country could claim support of the Father of the Nation, and it cannot, therefore, be said that the photograph of Mahatma Gandhi in this poster could be construed to indicate his support to the candidature of Congress candidates, much less could it be construed to amount to disapproval of the candidature of the petitioner. I, therefore, find in the negative on issue No. 8(a).

16. The evidence of Lokheshwar Prashad (P.W. 13) would show that the posters like Ex. P-45, were given to him by Shri Ram Rao who was the Secretary of the District Congress Committee, Sconi. Lokheshwar Prasad had pasted 6 or 7 such posters on the walls of the buildings of his village Banki. It is clear that Shri Upgade worked for the respondents 1 and 2. I have, therefore, no hesitation in finding in the affirmative on issue No. 8(b). I, however, do not find any false statement in this poster, nor could exhibition of such poster amount to a systematic appeal to national symbol.

17. Mahatma Gandhi was perhaps the greatest of the spiritual leaders born in this world during the last several centuries. Every nation could claim him as its spiritual leader. It would be wrong, therefore, to confine his leadership merely to this nation. It would, therefore, be wrong to regard him as a national symbol. If I am using the phrase correctly, he might even be considered International Symbol of peace. He was the leader not only of this country but the whole world. On account of his long association with the Congress, the Congress organization can with pride claim him as its leader. He was, as I have remarked in our order in election petition case No. 4 of 1952 decided on 19th February 1953, not simply the leader, but was the very life and glory of this organization. The poster also shows Pandit Jawaharlal Nehru hoisting the Congress Flag on the Red Fort at Delhi. The term "National Symbols" appears to me to have been used in Sec. 124 of the Representation of People Act to indicate symbols such as national flag and the national emblem. In my opinion, therefore, the publication of the poster such as Ex. P-45, can hardly be regarded as a systematic appeal to vote on the ground of use of National Symbols.

18. In view of what I have said in paragraph (15) above, I hold as regards issue No. 8(c) that the publication of the poster did not amount to making a false statement. Nor am I prepared to hold that it is a statement calculated to prejudice the prospects of the petitioner in the election.

(19) *Issue No.* 9.—It would appear from the evidence of respondent No. 2 that he never made a statement that the petitioner would try to restore the Malguzari. Thakur Jitsingh (P.W. 4) and Hirasingh (P.W. 16) deposed that he had said this in the speech delivered by him at Ghamari. It is difficult to place any reliance on Thakur Jitsingh who is obviously an interested witness. He is related to the petitioner and worked for him during the petitioner and worked for him during the last elections. His statement about Ramnath's signature does not appear to be true. He appears also to have given false evidence regarding Ramnath's presence at Babulal's shop.

20. The witness Hirasingh's evidence also can hardly be regarded as reliable. He stated on oath that he never told the petitioner regarding respondent No. 2's speech. How, the petitioner then cited him as a witness would appear to be a mystery. I am not prepared to hold that the respondent No. 2 ever made such a statement.

21. There is no evidence to show that the respondent No. 1 or his agents gave wide publicity to the statement mentioned above. Even assuming, however, that the statement was made (though I am clearly of opinion that the petitioner has failed to establish it), that the statement could hardly amount to a statement of fact. It is only a statement of opinion. Nor would it be a statement concerning the personal character or conduct of the petitioner. It would be a statement regarding the public conduct or character of the petitioner. I am, however, clearly of opinion that the statement is merely a statement of opinion and such a statement does not bring into operation sub-section 5 of the Section 123 of the Representation of the People Act. I find in the negative on issues 9(a), and 9(b), and as regards issue No. 9(c) I hold that this issue does not arise for decision.

(22) *Issue No.* 10.—It is clear, the respondent No. 2 wrote the letter dated 21st September 1951. The respondent No. 2 admitted it. I find in the affirmative on issue No. 10(a).

23. Petitioner's father Thakur Churamansingh was examined as a witness by him (P.W. 20). Even he did not say that respondent No. 2 had told him that the petitioner would be amply rewarded if he did not stand as a candidate. The evidence of the petitioner proves that the letters datd 16th Novmber 1951 and 27th September 1951 are in the handwriting of Babulal and Ramjibhai, respectively. It appears from Ex. P-28 that a copy of Ex. P-27 had been sent to Ramjibhai. There is, however, no evidence to show that any such letter was sent to Babulal of Nagpur. Babulal's letter appears to be unauthorised. Ramji Bhai, however, appears to have written the letter on the suggestion of the respondent No. 2, implied in his sending a copy of his letter to Ramjibhai. I find in the negative on issue No. 10(b). I find in the affirmative on the first part of issue No. 10(c). As regards its second part, I hold that Ramjibhai had been authorised and Babulal was not authorized to write the letter written by him.

24. There is no evidence to show that Shri Bhargava attempted to use any influence, much less undue influence, on the petitioner or tried to interfere with his right to stand for election. Ex. P-27 shows that Shri Pannalal Bhargava had promised to discuss the subject with the Petitioner's father. That may be the suggestion of Shri Pannalal Bhargava, and respondent No. 2 may have even consented to it, but that would not amount to the respondent No. 2's attempting to use influence of Shri Pannalal Bhargava for influencing the petitioner. The petitioner did not examine Shri P. L. Bhargawa. I find in the negative on issue No. 10(d).

(25) *Issue No.* 11.—It appears that the Congress party had invited applications from the persons who wanted to stand as candidates for election and such candidates had to deposit Rs. 100 each with the Congress organization. A condition was imposed upon candidates submitting such applications that they would not contest the election against Congress candidates if they themselves were not chosen as Congress candidates. The amount of Rs. 100 deposited by every such applicant was not to be returned to him if he was not selected by the Congress party to be their candidate at the election. This, according to the petitioner, is tantamount to bribery. According to him, this also is an interference with the electoral right of the applicant who was not chosen by the Congress party since he had to give an undertaking that he would not contest the election against the official Congress candidate. The payment of Rs. 100 as a fee by the applicants would not, in my opinion, amount to bribery. That was the amount paid to the Congress organization of which they were members. The amount is not paid with the object, directly or indirecly, of inducing a person to stand or not to stand, or an elector to vote or refrain from voting, and it would not fall under the definition of bribery.

26. It would also not amount to undue influence. That could not amount to direct or indirect interference with a free exercise of electoral right of the applicants who were not chosen by the Congress party as they had the option to resign from the Congress organization and to oppose the official Congress candidate. Remaining in the Congress organization and opposing an official Congress candidate would be a breach of discipline, and no organization can permit such a breach of discipline. Since the candidate had the option to resign from the Congress organization and then oppose the official Congress candidate, there could be no direct or indirect interference with the free exercise of the electoral right of such a candidate.

(27) *Issue No.* 12(a).—There is no evidence to show that the respondent No. 2 used any influence in the Mahakoshal Congress Parliamentary Board to secure the rejection of the candidature of Lekheswar Prashad Tiwari and Shri K. L. Tiwari. I, therefore, find in the negative on issue No. 12(a).

28. Pannalal (P.W. No. 10) deposed that he attended a public meeting held at Lurgi 3 or 4 days before the polling day. According to him the meeting was addressed by the respondent No. 2, Ratanchand and one Kanhaiyalal, and the respondent No. 2 distributed sweets which he had brought in his own car among the audience. About the sweets, the respondent No. 2 was questioned and he has given the account of how the sweets came to be distributed. They were distributed at the house of Indrajit Singh, who was the petitioner's worker, and Ratanchand had given an explanation that the sweets had been brought for the respondent No. 2's Satkar (welcome). It would appear from this that the sweets were not distributed at the instance of or with the consent of the

respondent No. 2. They were distributed under the pretext that the respondent No. 2 was being honoured. Moreover, it would appear from the evidence of respondent No. 2, that the meeting consisted of workers of several parties and only selected persons were called at the house of Indrajitsingh, where sweets were distributed to them. The evidence would clearly show that influential voters were not entertained by the Respondent No. 2 or at his instance, with sweets. I find accordingly on issue No. 12(b).

29. Regarding Ganga Prashad Chaudhari's entertaining influential voters with sweets, there is no evidence. I find in the negative on issue No. 12(c).

30. The only evidence regarding payment of Rs. 30 to Jawaharlal is the evidence of Jawaharlal himself. This witness appears to be unscrupulous and says that he came to give evidence because Rs. 20 were not paid to him. It is impossible to believe the evidence of such a witness. Moreover, according to Jawaharlal, Rs. 30 were given to him in the presence of Sakharam at Bandol; but Sakharam's (2R. W-6) evidence shows this is not true.

31. *Issue Nos.* 13(*a*) *and* (*b*) *and* 14(*a*) *and* (*b*).—There is no evidence on record, excepting the evidence of Anandilal (P. W. 2) regarding the speech of Shri Mangru (R1W2) in Kahani Bazar. He deposed that Shri Mangru had asked all the Adivasi voters to vote for the Congress. Respondent No. 1's witness, Shri Mangru (R1W2) also deposed that Adim Jatiya (Gond) Mahasabha adopted the Congress creed. But he denied that he addressed the Gonds or the Adivasis. According to him, he appealed to all the voters generally to vote for the Congress. There was, thus, no systematic appeal to vote on the ground of caste or community. The pamphlets (Exhs. P-64 and P-65), and the Poster, Ex. P-44, do not at all amount to appeals on communal ground. The Respondent No. 1 and 2 contended that Gadhewal Samaj and Adim Jatiya (Gond) Mahasabha are political organizations. There was nothing wrong in such organizations, forming a pact with the Congress and exhorting the voters who were members of such organizations or had sympathy with such organizations, to vote for the Congress. I find, therefore, in the negative on issue No. 13(b) and on the second part of the issue 14(b), though I find in the affirmative on the first parts of issues Nos. 13 and 14(a).

32. *Issue No.* 15.—There is no evidence to show, nor did the petitioner's counsel demonstrate how the ballot boxes did not conform to the requirements of law. He promised to demonstrate how the ballot papers could be withdrawn from them without the boxes being unlocked or the seals broken. But no demonstration was given before us. I find in the negative on both parts of issue No. 15.

33. *Issue No.* 16.—There is no evidence to show that arrangements for the safe custody of ballot boxes had not been made. I find in the negative on issue No. 16.

34. *Issue No.* 4(*a*).—The Petitioner led no evidence to show that all the 28 persons mentioned by him in paragraph 10(b) of the petition were Panches of the Village Nyaya Panchayat. The fact, however, could be ascertained from the copies of the Madhya Pradesh Gazette. I have persued the C.P. Gazette dated April 27, 1948, and I find that all the persons mentioned in paragraph 19(b) of the petition except Prabhatgir were appointed panches of the different Nyaya Panchayats. Their being members of the Village Nyaya Panchayats would not constitute them persons "serving under the Government of India or the Government of Madhya Pradesh." They work at their pleasure and not paid for the work they do. Even if anyone of them, therefore, worked for the respondents 1 and 2, that would not amount to assistance from persons serving under the Government of India or the Government of any State. I am clearly of opinion that the Panches of the Village Nyaya Panchayat are not persons serving under the Government of India or the Government of any State. (The State of Madhya Pradesh).

35. *Issue No.* 4(*b*).—The Petitioner filed the copies of the entries from the registers which are called the Lambardari Registers. These are exhibits P-5 to P-8. After the abolition of the Malguzari consequent on the coming into force of the Abolition of the Proprietary Rights Act, an entry in a Lambardari Register can hardly be relevant. Ex. P-9 shows that Sakharam was the Patel of Bisapur and Ex. P-32, P-33 and P-34 shows that Raghu minor, whose agent was Chetan, was the Patel of the village Pipal Ghana, Radhakishan of the village Dhuma and Ramranjan Singh of the village Ghansore. Ramranjan Singh has been mentioned to be a Mukaddam. Similarly, Exhs. P-11 to P-15 showed that Mohansingh was the Mukaddam of Deori, Majid Khan of Mohogaon, Chamatkar Singh of Nawalgaon, Indrajit Singh of Lurgi, Chhota Bharati of Bhimgarh and Bhagwandas of Sahasna. Bhagwandas, however, denied that he had been appointed a Patel or Mukaddam or that he had accepted any appointment. According to him he had

resigned his candidature and never executed any agreement. According to Chamatkar Singh (R-2W-11) also, he had resigned his candidature for the office of a Patel or a Mukaddam. Ramranjansingh (R-2 W-9) admitted that he was a Patel of Ghansore.

36. Under the rules framed under the Abolition of the Proprietary Rights Act, the person who is appointed a Patel, only works as a Mukaddam. The rules do not contemplate appointment of separate persons as Patels and Mukaddams. The filing of copies of entries from the register of Patels or Mukkaddams cannot be any evidence of acceptance of the office of Patel or Mukaddam by the person mentioned in the entry. It was necessary for the Petitioner to prove that the persons mentioned in the entry had executed the necessary agreement. He failed to do it in the case of all except Mahadeo, Sakharam, Ratanchand, Ramnath and Umrao Prashad. Abdul Majid (R2 W3), Radhelal (R2 W2) and Chhotelal (R2 W7) admitted that they were Patels and Mukaddams. I, therefore, hold that Abdul Majid Khan, Radhelal, Chottelal, Ramranjan Singh, Umrao Prashad, Mahadeo, Ratanchand, Sakharam and Ramnath were Patels and Mukkaddams. The Petitioner failed to prove that others were or worked as Patels or Mukkaddams.

37. It has been admitted by the Respondents that Pandit Umrao Prashad was a Patel of Mungwani, and he presided over one meeting addressed by the Respondent No. 2 during his election campaign. It would appear from the evidence of the Respondent No. 2, as also from the evidence of Bhagwandass, that he accidentally happened to be present and was proposed to be the President of the meeting. The evidence of the Petitioner's witnesses would show that Pandit Umrao Prashad spoke at the meeting. Bhagwandass (R2 W5) and the Respondent No. 2 deposed that he did not speak a word at that meeting. P.W. 19 Ravindranath deposed that Umrao Prashad had asked people to vote for the Respondents 1 and 2. His presiding on the occasion would show his support to the candidature of the Respondent No. 2. Though it is doubtful if he spoke but it is certain he presided over the metting which was attended by about 2000 men in which the speakers exhorted the people to vote for respondents 1 and 2.

38. The evidence does not show that Chhota Bharati, Indrajit, Indranarayan, Chetan, Dwarkaprashad, Thansingh and Tikam Singh were or worked as Patels. The evidence adduced by the Petitioner about the work alleged to have been done by them (*i.e.* that certain persons canvassed votes for respondents 1 and 2 or distributed pamphlets) is not very satisfactory. In fact it is easily possible to secure witnesses to say that a certain person canvassed votes or distributed leaflets for a certain candidate. I cannot rely on such oral evidence. I am, therefore, not prepared to hold that out of the person proved to be Patels, any except Umrao Prashad worked for respondents 1 and 2 and Umrao Prashad also did nothing besides presiding over a meeting.

39. It is clear from the evidence of the Respondent No. 2 himself, that Mahadeo and Ratanchand were not his workers. As regards Radhelal, it was pleaded that he worked for the Congress as he was an old Congressman. This would not mean that he had been authorised by the Respondent No. 2 to work for himself nor would his working for the Congress Organization, of which he was a member, amount to Respondent No. 2's obtaining or procuring or attempting to obtain or procure any assistance from this congress-man Radhelal. The moment it came to the notice of the Respondent No. 2 that he was working for all the Congress candidates he stopped him from working for him. It is also clear from the evidence of Chamatkar Singh (R2 W11) and Bhagwandas (R2 W5) that they were neither Patels nor the Mukaddams and if they worked for the respondent No. 2, there was nothing wrong as they would not be the persons serving under the Government of India or the Government of Madhya Pradesh.

(40) *Issue No.* 4(c).—It would appear from the evidence of Narayansingh, that Prithivisingh was a school-teacher at Chandori and the evidence of Thakur Deep Singh would show that Chaturbhuj and Mathuraprashad, as also Prithvi Singh are teachers in Janpad Schools. There is no evidence to show that Mathura Prashad worked for any candidate. Anandilal (P.W. 8) deposed that Chaturbhuj Prashad went round the village canvassing votes for the Respondent No. 2. There is no evidence to support him. Narayansingh (P.W. 2) deposed that Prithvi Singh had told him that he would work for the Congress candidate, as Ram Rao, the President of the Janpad Sabha, Seoni, had directed him to work for the Congress candidates. This appears to me to be highly improbable. If really he was working for the Congress, he would not have made such a confession to the witness. He must have known, that, as a school-teacher, he could not indulge in Political propaganda. I am, therefore, reluctant to believe the evidence of Naryansingh on the point.

41 The evidence of Mastaram (P.W. 6) would appear to be highly improbable in view of the difference between his evidence and the letter sent by him. I do not consider the evidence of Anandilal (P.W. 8) also to be very reliable as Anandilal is obviously a very highly interested witness. I am not prepared to hold on the evidence of these witnesses that the school-teachers, Prithvi Singh, Mathura Prashad or Chaturbhujprashad, worked for any of the Congress candidates. I find in the negative on the 2nd part of the Issue No. 4(c), though I find in the affirmative on its first part.

42 *Issue No.* 4(*d*).—There is no good evidence to show that Shri Barelal, Shri Roshanlal and Shri Tarachand were Patwaris. There is evidence to show that Laxmiprasad was the Patwari of Bhimgarh. According to Anandilal, he had seen Laxmiprashad distributing the pamphlets relating to the peoples' rights to Nistar. These pamphlets were issued by the Government. His distribution of these pamphlets would not amount to his rendering assistance to the Respondent No. 2 in furtherance of the prospects of his election. According to the witness, Laxmiprashad gave only two copies of the pamphlets to two persons. No question was put to him as to why he handed over the copies of the pamphlets to two persons and not to others. There is no evidence to show that any of the other Patwaris in any way worked for the Respondents 1 and 2. Thus my finding on Issue No. 4 (d) (i) is, "Yes" as regards Laxmiprashad, and "No" as regards the others. My finding is also in the negative on issue No. 4(d)(2).

43 There is no evidence to show that Lotan is the village watchman of the village Bhimgarh or that he worked for all the Respondents. I find in the negative on issue No. 4(e).

44 *Issue No.* 4(*f*).—The only evidence on this issue adduced by the petitioner is the evidence of Hariprashad (P.W. 18). He, however, does not support the Petitioner's contention of threat given by the Sub-Inspector for working against the Congress. According to the witness, he was merely asked not to work for any candidate. Regarding the alleged threat to Khemkaran, there is no evidence, nor is there any good evidence about the Sub-Inspector's scolding Sukhdeo Pradhan. Hariprashad (P.W. 18) does not say that a threat that he would be arrested was held out to him. There is no evidence to show that the Sub-Inspector worked for the Respondents 1 and 2. I find in the negative on all the parts of the Issue No. 4(f).

45 In view of my finding on Issue No. 4(a) to 4(f). I find in the negative on Issue No. 4(g).

46 *Issue No.* 5(*a*) & (*b*).—The only evidence on this issue is the evidence of Dali Khan (P.W. 5) and Anandilal (P.W. 8). According to Dali Khan, Babu Govinddas addressed the meeting and asked the voters to vote for the respondent No. 2 and told them that they would have to go to Pakistan if they did not vote for him. According to Anandilal, Babu Govinddas only said that they would have to go to Pakistan if they did not vote for the Congress candidates. Dalikhan's (P.W. 5's) evidence is worthless since he admitted that he could not properly hear and that he had heard Babu Govinddas mention Pakistan, but did not know what he had said about Pakistan. Anandilal's (P.W. 8's) evidence, as I have already stated above, is interested evidence, and no reliance can be placed on it. I am unable to hold on this unsatisfactory and insufficient evidence that the Muslims were threatened, intimidated, or coerced in any way to vote for the Congress candidates. I find in the negative on both the parts of issue No. 5.

47 *Issue No.* 6(*a*).—It is admitted by the Respondent No. 2 that he had appointed himself as his own Election Agent. The nomination paper of Respondent No. 1 also shows that he had appointed himself as his own Election Agent. I find in the affirmative on Issue No. 6(a).

48 *Issue No.* 6(*b*).—The evidence relating to the point involved in this issue has been discussed by me under Issue No. 4(b). In view of my findings there, I hold that only Sakharam, Chhotelal, Majidkhan and Mohansingh were Patels and were serving as such under the State of Madhya Pradesh. Chamatkar Singh and Shrikrishna Selot were not Patels. I hold that it is not proved that others were serving under the Government of the State of Madhya Pradesh. It has also not been proved that all of them had been appointed Polling Agents. Some of them had been, but that, in my opinion, does not affect the case in any way, as I am clearly of opinion, that a Polling Agent does not assist in furthering the prospects of a candidate in his election, since all he can do is to watch the proceedings and prevent false personation.

49 *Issue No. 6(c)*.—Shri Shrikrishna Selot's (R-2W10's) evidence would show that he attended several meetings held in support of the candidature of the respondents 1 and 2. He was one of the workers of the respondent No. 2 and he seems to have arranged the meeting. It is clear from his evidence that he resigned his candidature for the office of Patel. I would find in the affirmative on Issue No. 6(c).

50 *Issue No. 6(d) (i)*.—The evidence discussed by me in issue No. 4(b) would show that Ratanchand and Mahadao were Patels. As regards Indrajit, the Petitioner has failed to prove that he was a Patel. I find accordingly on the 1st part of the issue No. 6(d)(i), and as regards Ratanchand and Mahadeo, I hold that they were serving under the Government of Madhya Pradesh. As regards Indrajit, I find in the negative on the 2nd part of the issue No. 6(d)(i).

51 *Issue No. 6(d) (ii), 6(e) (i) & 6(e) (ii)*.—It would appear from the evidence of Shri Shri Krishna Selot (R2 W10) that a meeting had already been convened and was being addressed by the Socialists when the Respondent No. 2 and others reached the place. I find in the negative on Issue No. 6(d) (ii).

52 As regards the Issue No. 6(e)(i), Vinodprashad appears to be a mistake for Umraoprashad. I would read Umraoprashad in the Issue, and find in the affirmative on the first part of Issue No. 6(e)(i), in view of the evidence I have discussed above. His presiding over the meeting organized by respondent No. 2's workers would show that he was a supporter of respondent No. 2 and even though he may not have spoken at the meeting he demonstrated by his conduct that he supported the speakers who exhorted the people to vote for respondents 1 and 2. I would find accordingly on the second part of issue No. 6(e)(i).

53 There is no evidence to show that the meeting at Lurgi was convened by Bansilal Barai. It is admitted that the meeting at Chhapara was convened by Bansilal Barai. I, therefore, find in the affirmative on the first part of Issue No. 6(e) (ii) and in the negative on its second part.

54 *Issue No. 6(f)*.—The petitioner has adduced no evidence to prove that the persons mentioned in paragraph 12(d) of the petition were Panchas of the Nyaya Panchayat. It is admitted by the Respondent No. 2 that they were appointed by him as his Polling Agents. According to him, however, four out of them did not work as his Polling Agents, and the Petitioner failed to prove that those four did work as the Respondent No. 2's Polling Agents. I find in the affirmative on the 2nd part of the issue No. 6(f). I also find in the affirmative on the first part of Issue No. 6(f) since the Notification in the Madhya Pradesh Gazette of which I am bound to take a Judicial notice proves this.

55 *Issue No. 6(g)*.—There is no good evidence to show that Bansilal or Umraoprashad worked or canvassed votes for Respondents 1 and 2. Bansilal Barai is alleged to have convened a meeting. That was the only work done by him. Umraoprashad presided over the meeting held at Ganeshganj. There is no good evidence to show that they also did the work of canvassing votes for the respondents 1 and 2. As regards issue No. 6(g) I hold that the eight out of the Panches worked as Polling agents of respondent No. 2 and Bansilal convened a meeting and Umrao Prashad presided over one.

56 *Issue No. 6(h)*.—My attention was drawn to sub-section (3) of section 100 and it was pointed out that this sub-section only applied when the alleged corrupt practice was resorted to by the candidate's agents other than an election agent. In this case, several corrupt practices were alleged, one was entertaining, and thus offering to them gratification. The evidence of the respondent No. 2, however, clearly shows that it was not at his instance or with his connivance that sweets were distributed at Lurgi by Ratanchand. The distribution of Pan also was clearly not by respondent No. 2, but was probably by Bhagwandas, respondent No. 2's agent, other than an election agent. That took the form of a customary hospitality and cannot be taken any notice of.

57 At Ganeshganj also one Ganga Prashad Chaudhary invited the respondent No. 2 and others. That also took the form of a customary hospitality. It is also not proved that it was at the instance of or by the connivance of the respondent No. 2.

58 At the meeting at Ganeshganj, Umrao Prashad was, no doubt, proposed to be the President of the meeting. The proposal was made by Bhagwandas, according to Ravindranath (P.W. 19). All that would be said was that the respondent No. 2 did not prevent it. Respondent No. 2 has given his reasons for not doing it. In his written statement, he pleaded that he did not know that he

was a Patel or Mukaddam of Mongwani. The petitioner did not also prove that the respondent No. 2 knew it. Thus it is difficult to hold the respondent No. 2 guilty of a corrupt practice. If his agent Bhagwandass was guilty of this corrupt practice, it is clearly in contravention of the directions issued by the respondent No. 2 by a circular letter, Ex. 2-R-5. The Respondent No. 2 had taken all the reasonable means of preventing the commission of the corrupt practice.

59. It was argued by the learned Counsel for the petitioner that the respondent No. 2 was guilty of corrupt practice of obtaining assistance from Umrao Prashad a person serving under the Government as a Patel or Mukaddam. It was covered by explanation under sub-section 8 of Section 123 of the Representation of the People Act. I have, no doubt, that the explanation is wide enough to cover a village officer serving as a Patel or Mukaddam. I am also clear that though the respondent No. 2 was present when Umrao Prashad was proposed to the Chair, it cannot be a case of a connivance since it is not proved that the respondent No. 2 knew that Umrao Prashad was a Patel or Mukaddam. What is prohibited by sub-section 8 of Section 123 is obtaining by the candidate or his agent or by any other person with his connivance any assistance from any persons serving under Government of India or the Government of any State for furtherence of the prospects of the candidate's election. If a person permits the obtaining of the assistance from any person serving under the Government of India or the Government of any State, he will be guilty of corrupt practice. But if a person permits his obtaining the assistance of a person whom he does not know to be a person serving under the Government of India or the Government of any State, can it be said that such a person is guilty of corrupt practice? It was pointed out that the knowledge of the candidate as regards whether a person was a Government servant or not, was not relevant and all that was necessary was that the person whose assistance is obtained is a person serving under Government. If he is a person serving under the Government, it was argued the case is hit by sub-section 8 of section 123 of the Representation of the People Act. I am doubtful, if this is correct. If a candidate does not know that a person is a Government servant and obtains his services or permits the obtaining of his assistance for a limited purpose, I doubt if he could be held guilty of a corrupt practice.

60. It was suggested that when the respondent No. 2 himself was present, the proposal of Bhagwandas suggesting Umrao Prashad's name would really be proposal of the respondent No. 2. I am unable to accept the argument, for the respondent No. 2 may have left everything to be done by Bhagwandas who was working within the Constituency of which he had first-hand-knowledge. In my opinion, therefore, it was really Bhagwandas's proposal and not respondent No. 2's.

61. The corrupt practice of obtaining the assistance was thus committed by the agent of the respondent No. 2. It was also for a limited purpose of the meeting and it was done by the agent in spite of instructions to the contrary issued by the candidate, and in all other respects the election was, therefore, free from any corrupt or illegal practice on the part of the candidate or any of his agents and the respondent No. 2 would, therefore, be protected under sub-section 3 of section 100 of the Representation of the People Act. I find in the affirmative on issue No. 17 and in the negative on issue No. 18.

62. *Issue No.* 6(*i*).—The evidence of the respondent No. 2 and Bhagwandas clearly shows that in the presence of the respondent No. 2, Pandit Umrao Prashad was proposed to be the president of the meeting held at Ganeshganj. It also appears that Bansilal Barai also convened a meeting, either at the instance of respondent No. 2's agents or with their knowledge. So I have no doubt that whatever part was played by Umrao Prashad and Bansilal Barai, was played by them at the instance of Bhagwandas the agent of the respondent No. 2. I find accordingly on issue 6(i) so far as these persons are concerned. As far as the persons mentioned in issue No. 6(v)(ii) are concerned, I find in the negative on this issue.

63. *Issue No.* 7(*a*)(*i*).—The petitioner only succeeded in proving that Radhelal Sharma, Ramnath and Ramranjansingh were Patels. As regards others, I do not hold that they were Patels or worked as such. I am not prepared to hold that the respondent No. 2 or respondent No. 1 had obtained or procured, or attempted to obtain or procure the services of any of these persons for furthering his prospects in the election. I find accordingly on both parts of issue No. 7(a).

64. *Issue No.* 7(b).—On a reference to the C. P. Gazette (Extraordinary) dated April 27th, 1948, I find that all except Prabhatgir (No. 7) mentioned in paragraph 13(b), were members of Nyaya Panchayats. The respondent No. 2 admitted

in paragraph 17 of his deposition that out of the 13 persons named in paragraph 13(b), Shri Murarilal, Shri Kishandas (Karandas), Shri Radhelal (Radhekrishna), Shri Chaitram Potdar, Shri Kanhaiyalal Tiwari and Shri Chandrika Prashad, worked for him. There was nothing wrong in respondent No. 2's asking or permitting them to work for him, as according to me, they, as Panchas of Nyaya Panchayats, were not serving under the State of Madhya Pradesh. I find accordingly on both the parts of issue No. 7(b).

65. *Issue No. 1(a).*—The respondent No. 1's defence was that he was more than 25 years of age. He did not state the date and place of his birth. On behalf of the petitioner, an application for permission to deliver interrogatories to the respondents 1 and 2 was made; but that application was not allowed by us and we dismissed it. We, however, offered to permit the respondent No. 1 to amend his written statement if he wanted to disclose the time and place of his birth. The respondent No. 1, however, refused to amend the written statement so as to disclose the time and place of his birth, but offered to answer interrogatory No. 1 relating to the time and place of his birth if he was so ordered. We, however, decided not to grant leave to deliver interrogatories. The respondent No. 1 did not avail of the opportunity of amending his written statement so as to state the time and place of his birth which he should really have stated in his written statement. His evasion to state this is significant and must be taken into account in judging the reliability of the evidence adduced by him in proof of his age.

66. The respondent No. 1's own evidence on the point of his age has really no value as the respondent No. 1 cannot be expected to have personal knowledge about his own age. The respondent No. 1's conduct in stating 17th June 1927 as the date of his birth in different documents is, however, significant. In his applications for admission to the several institutions which he attended, the date of birth mentioned was 17th of June 1927. See Ex. P-50, 51 and 54. In the application for inclusion of his name in the electoral rolls he mentioned his age to be "26 on 1st March 1950", while in his nomination paper filed on 14th November 1951 (copy. Ex. P-57) he mentioned his age as 25 years and 4½ months. He was asked to explain the discrepancy in the age mentioned in Ex. P-56 and Ex. P-57, and he gave a ridiculous reply that he had mentioned the age into which he had stepped, in Ex. P-56. The explanation is absurd on the face of it. As regards the age in the nomination paper, he explained that he had started running 25th year only 4½ months before he had filled up the nomination form and that he stepped into 26th year after completing his 25th year on 1st April 1952. This would itself show that he was not 25 years of age at the time he filled up the nomination paper.

67. The evidence of Mangroo (R1W2), Gokal (R1W3) and Bhura R1W4) is to the effect that in the rainy-season of 1926 the respondent No. 1 was about 3 or 4 months old. This evidence is inconsistent with the entry in the register, which gives 17th June 1927 as the date of birth of the respondent No. 1. The entry in the register is signed by Mangroo, the father of respondent No. 1, who is expected to know the real date of birth of the respondent No. 1. It is impossible to believe that the entry could have been signed by him without noting the date of birth mentioned therein. His signing the entry indicates confirmation by him of the date of birth mentioned therein. In the face of this evidence and the entries made by the respondent No. 1 in his application form it is impossible to hold that the date of birth mentioned by respondent No. 1 in the applications or mentioned in the Janmatithi register of Limarua School, was wrong. There is also a presumption that the date of birth of a person mentioned in his School certificate is correct. In the School and the College registers and transfer certificates the date of birth mentioned is 17th June 1927. (See Ex. P-46, P-47, P-48, P-49, P-52, P-53 and P-55). The certificates show that the respondent 1 was vaccinated but no attempt was made to get the vaccination register produced before the Tribunal.

68. As against this evidence, it is not possible to believe the evidence of Mangroo (R1 W2), Gokal (R1 W3) and Bhura (R1 W4) about the respondent No. 1's birth about 3 or 4 months before the rainy-season of 1926. I hold that the respondent No. 1 was born in June 1927 and he was less than 25 years at the time he submitted his nomination papers. He was, therefore, not qualified to fill a seat in the Legislature of this State.

69. *Issue No. 1(d).*—The respondent No. 1 contended that the petitioner had failed to raise the objection regarding his ineligibility on account of non-age before the Returning Officer and that he was, therefore, estopped from raising the question now. There is nothing in the Constitution or in the Representation of the People Act to show that there is any obligation on the elector to object

to any nomination submitted to the Returning Officer. Nor is there any provision in law to show that failure to raise any objection before the Returning Officer would be a bar to the raising of the same objection in an election petition. I do not see, therefore, how the doctrine of estoppel can be applied to this case. In order to apply the doctrine of estoppel, conditions mentioned in section 115 of the Indian Evidence Act, ought to exist. It has not been shown that any such condition existed in this case.

70. *Issue No.* 1(*b*).—I have already held that the respondent No. 1 was less than 25 years of age on the date of the filing of the nomination papers. The next question that has to be determined is whether the nomination of respondent No. 1 was improperly accepted by the Returning Officer. The learned counsel for the petitioner argued that under section 36 of the Representation of the People Act, it was the duty of the Returning Officer to satisfy himself as regards the qualification of the respondent No. 1 to be chosen to fill a seat in the State Legislature; that respondent No. 1 made a false entry regarding his age in the nomination paper and the Returning Officer allowed himself to be misled by such entry; and that the Returning Officer's acceptance of the nomination paper, therefore, was wrong and we are, therefore, bound to hold that the nomination of the respondent No. 1 had been improperly accepted.

71. The learned counsel for the respondent No. 1 pointed out that the provision in the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, provided that if in the opinion of the Commissioners, the result of the elections had been materially affected by the improper acceptance or rejection of a nomination, or by reason of the fact that any person nominated was not qualified or was disqualified for election,....the election of the returned candidate should be void. It was argued that the words "or by reason of the fact that any person nominated was not qualified or was disqualified for election", did not exist in section 100 of the Representation of the People Act. He, therefore, contended that it was not contemplated that the Tribunal should enquire into the question of qualification or disqualification of a candidate, in proceedings challenging the election of a candidate by way of an election petition. It was, on the other hand, argued that the provision of section 100(1)(c) was sufficient to cover the case of a candidate who was not qualified or was disqualified for election, as the result of such a lack of qualification, or disqualification, was necessarily improper acceptance or proper rejection of the nomination of such ineligible or disqualified candidate. According to the learned counsel for the petitioner, therefore, the finding on the point of improper acceptance or rejection of a nomination necessarily involved determination of the question of want of qualification or disqualification of the nominated candidate, among other questions, if any. It was pointed out that the words,

> "by reason of the fact that any person nominated was not qualified or was disqualified for election".

were, therefore, thought redundant and omitted. It appears to me that there is much force in the contention raised by the learned counsel for the Petitioner.

72. My attention was drawn by the learned Counsel for the respondent No. 2 to the case of *Nawab Sir K. G. M. Faroqui Vs. Moulvi Mohammad Habibullah, and others* (H. S. Doabia's Indian Election Cases Vol. 2, page 24, Election Case No. 2). It was argued that by the omission of the words "by reason of the fact that any person nominated was not qualified or was disqualified for the election" the Tribunal was necessarily reduced to the position of either the Returning Officer or an appellate Court which merely was authorised to see if, on the material before it, the Returning Officer's decision accepting or rejecting the nomination paper could be regarded as right or wrong. It was contended that when on the material before him the decision of the Returning Officer was correct, the Tribunal would be precluded from holding that the acceptance was improper; if, however, it was held that the decision of the Returning Officer accepting or rejecting the nomination was incorrect on the material available to him, then the Tribunal would be justified in holding that the acceptance of the nomination by the Returning Officer was improper. The learned counsel for the respondent No. 2 relied on *Hobbs Vs. Morey,* (1904 King's Bench Division 74) and drew my attention to the observations at pages 77 and 78.

> "If no objection is made or if objections are stated or repelled by the mayor, then the nomination becomes a valid nomination.....The expression 'valid nomination' therefore, includes the case of a person who is disqualified in fact, but whose disqualification is not apparent on the nomination paper and whose nomination has been sustained by the mayor".

73. Relying on these observations the learned Counsel argued that the nomination of the respondent No. 1 was a valid nomination and, therefore, a proper nomination under the circumstances under which it was made, it was argued that this Tribunal could not hear any objection and hold that the decision of the Returning Officer accepting the nomination was improper.

74. Relying on the authority of *R. Vs. Northumberland Compensation Appeal Tribunal* (1952 *All England Law Reports page* 122), it was argued that this Tribunal could have no jurisdiction to hold the decision of the Returning Officer accepting Respondent No. 1's nomination as improperly secured. Reliance was also placed on *Ponnamma V. Arumogam and others* (1905 Appeal Cases 383) in support of the proposition that on an appeal strictly so call such a judgment can only be given as ought to have been given at the original hearing.

75. I have carefully considered the English decisions cited by the learned counsel for the respondent No. 2. It appears to me that the jurisdiction of this Tribunal is a special jurisdiction, and questions covered by the provisions of the Representation of the People Act or the Constitution of India regarding elections are the questions which fall for consideration and decision by this Tribunal. The English cases cited by the learned counsel can hardly furnish any guidance for decision of the questions which arise for decision in election disputes. Fortunately, there are a number of cases which have considerd the scope and effect of the various provisions of the Representation of the People Act and the Constitution, and I shall now turn to those cases for guidance.

76. The learned counsel for the respondent No. 2 drew my attention to *Ram Murti V. Shri Dumba Sadar* reported in the Gazette of India (Extraordinary), December 30, 1952 page 1087, and *Shri Prem Nath Vs. Ram Kishan and others*, decided by the Election Tribunal of Jalander and reported in the Gazette of India, (Extraordinary), December 19, 1952 page 1017, and it was argued that in both these cases it was held that the case fell under section 100(2)(c), though it was contented that it could be argued that it was a case of improper rejection falling under section 100(1)(c). I do not find any discussion in these cases regarding the application of section 100(1)(c).

77. My attention was also drawn to the decision of the Election Tribunal Bareli in *Aslam Khan Vs. Fazlul Haq and others*, (Gazette of India Extraordinary, 783), in which the following observations appear:—

> "It appears unnecessary to refer to other findings of the Election Commissioners as the law has since been changed and the Tribunal has now only to consider if the nomination has been improperly rejected or accepted, and not if the candidate was not qualified or was disqualified for election".

On the basis of these observations it is argued that it is not open to this Tribunal to decide the question of want of qualification or disqualification.

78. In *Mohinder Singh Vs. S. Mihansingh and others.*—[before the Election Tribunal at Patiala, Gazette of India (Extraordinary) page 556], which was an application to set aside the election to a double constituency (one seat being reserved for scheduled castes) on the ground that there was an improper rejection of the nomination of one of the candidates, the rejection was held to be improper under section 100(1)(c) and election to both the seats was set aside as election was held to be wholly void.

79. My attention was also drawn to the observations on page 1019 of the Gazette of India in the Election Petition No. 232 of 1952, *Prem Nath Vs. Ram Kishan* (The Gazette of India Extraordinary December 19, 1952, page 1017) that:

> "It seems to us that the Tribunal would be entitled to interfere with the orders of the Returning Officer only when a perversity or some violation of the principles of natural justice is to be discerned in the impugned order of the Returning Officer."

It was argued that, as there was no such perversity in the order of the Returning Officer, this Tribunal could not interfere and hold the decision of the Returning Officer as improperly secured.

80. It was also argued that it was not permissible for the Returning Officer to travel beyond the electoral roll and entries made by the candidate in his nomination paper, and therefore it was impossible for him to hold that the candidate was not qualified to fill a seat in the State Legislature. In suport of this argument, reliance was placed on the observations in paragraph 7 of the Election Tribunal Madras in *U. C. Subramania Bhatt Vs. Sri Abdul Hameed Khan and*

others (Gazette of India Extraordinary December, 16, 1952). It was argued that, since it was not open to the Returning Officer to travel beyond the entries in the nomination paper and the electoral roll, he could not possibly hold that the respondent was not qualified to fill a seat in the State Legislature and that this Tribunal could not hold the decision of the Returning Officer accepting his nomination as improper.

81. One more case cited by the learned counsel was *Narayandas Goswami Vs. Dr. Homeshwar Deo* before the Election Tribunal Gauhati, Election Petition No. 39 of 1950, Gazette of India Extraordinary, page 1066), in which section 100(2)(c) of the Representation of the People Act was applied. That was obviously not a case of improper rejection or acceptance of nomination and section 100(1)(c) was inapplicable to it.

82. The word "improper" means "inaccurate, wrong, unseemly, indecent" (See the Concise Oxford Dictionary). In the context in which the word is used in section 100(1)(c) the appropriate meaning would appear to be "inaccurate" or "wrong".

83. I agree with the learned counsel for the respondent No. 2 that when we speak of 'improper acceptance or rejection of a nomination', we really mean "improper decision accepting or rejecting a nomination." (See section 36 sub-section (6) of the Representation of the People Act). The production of a certified copy of an entry in the electoral roll is, under sub-section (7) of section 36, i.e., for purposes of the Returning Officer's decision accepting or rejecting the nomination paper. But where a nominated candidate is really not qualified to fill a seat in the Legislature, though the want of qualification may not be apparent from the certified copy of the entry in the electoral roll or from the entries in the nomination form, the decision of the Returning Officer accepting the nomination can hardly be regarded as a correct or proper decision. Merely because the lack of qualification is suppressed and nomination is secured on a misrepresentation, can we say that the acceptance of such nomination is proper? In my opinion, the acceptance would be wrong or improper, whether the authority accepting it knew of the lack of qualification or did not know of it. If the candidate was not really qualified and had succeeded in securing the decision of the Returning Officer accepting his nomination, that decision is not a right decision. An Officer may give a wrong decision in ignorance of real facts, but merely because the facts disclosed to such officer justified the decision, the decision cannot be styled a right, correct or proper decision. In my opinion, therefore, even though the lack of qualification had been suppressed from the Returning Officer, the Returning Officer's decision accepting the nomination cannot be considered as right or proper, though on the material before him, he might be justified in giving it. Thus, if the respondent No. 1 was below 25 years of age and was not, therefore, qualified to fill a seat in the State Legislature, the mere fact that he secured the acceptance of his nomination by suppressing this lack of qualification from the Returning Officer, will not make the acceptance of his nomination by the Returning Officer proper acceptance. His decision accepting the nomination is wrong though given in ignorance of the lack of qualification of the candidate, and, I, therefore, think that the case would fall under section 100(1)(c) of the Representation of the People Act.

84. It was argued by the learned counsel for the respondent that this was non-compliance with the provision of the Constitution which requires that the candidate should not be less than 25 years of age. I doubt if this would be a case of the non-compliance with the provisions of the Constitution. "Compliance" means "action in accordance with request, command etc." It also means "base submission" (The Concise Oxford Dictionary, 3rd Edn.). "Comply", according to the Dictionary, means "act in accordance with wish, command etc.". Non-compliance would, therefore, mean not acting in accordance with request, wish or command. A section of the Constitution which lays down qualification contains no request or command, and it would be incorrect to say that a person who does not possess the requisite qualification does not comply with the provisions of the Constitution. I doubt, therefore, whether this would be a case of non-compliance with the provisions of the Constitution and would fall under Section 100(2)(c) of the Representation of the People Act.

85. The applicability of Section 100(1) and Section 100(2) of the Representation of the People Act was considered in *C. K. Ramchandra Nair Vs. Shri Ramchandra Das and 14 others* [decided by the Election Tribunal of Quilon, published in the Gazette of India Extraordinary of Nov. 11, 1952, page 2396(e)]. It was observed by the learned members of the Tribunal, while rejecting the argument that the ground of improper rejection and acceptance of the Nomination paper

specifically treated under section 100(1)(c) may also be deemed to fall within the scope of the ground in Section 100(2)(c):—

> "It is, however, difficult to accept this contention, and on the same parity of reasoning, it must follow, that the grounds of clauses (a) and (b) of sub-section (1) of Section 100, are also covered respectively, by clause (a) and (b) of sub-section (2) of Section 100. If this reasoning is to prevail, it would lead to the anomally already indicated, that two reliefs can always follow from the grounds in sub-section (1) of Section 100. It fails to take into account, the mandate of Tribunal, that on the grounds in Section 100(1) the stated relief shall follow, which necessarily excludes all others. The better view seems to be, that the grounds in clauses (a), (b) and (c) of Section 100(1), and at any rate, the particular ground in clause (c), have been dissociated from their genus for separate treatment under Section 100(1), leaving the residue alone, to be dealt with under sub-section (2), and Section 101".

In *Shri Suryaji Bambal Vs. Shri Bhika Trimbak Pawar* (Gazette of India Extraordinary dated December 7th, 1952, page 972), the point was considered and the learned members of the Election Tribunal observed as follows:—

> "He, however, argued that the first ground, viz. the respondent No. 1 was below 25 years, does not come within the meaning of expression non-compliance with the provisions of the Act..... He contends that it falls under sub-section 1(c), i.e. improper acceptance or rejection of a nomination. We are inclined to agree with the view....., because the word non-compliance generally connotes the failure to abide by the rules of procedure. The fact that the candidate was below 25 years of age, would be a ground for his disqualification and would entail the inevitable consequence, namely the rejection of his nomination.
>
> Whether the ground was actually urged before the Returning Officer or not, is entirely immaterial. It is clear that if such a ground were to have been urged before the Returning Officer, he would have considered the same and passed his order either accepting or rejecting the nomination paper. That would necessarily attract the application of clause (c) of sub-section (1) of Section 100 of the Act."

I am fully aware of the observation regarding the decision of the Returning Officer on an objection, but it is clearly implied in the observations quoted by me, that even if there was no such objection, such a case would fall under clause (c) of sub-section (1) of Section 100 of the Act.

86. The learned counsel for the respondent No. 2 argued that even if this was a case of improper acceptance of the nomination, the Tribunal would not be justified in holding the election of the Respondent No. 2 void because the Petitioner had not proved that the result of the Election to the General Seat had been materially affected by the improper acceptance of the nomination of the Respondent No. 1 and also because the law did not contemplate that want of qualification of one of the candidates should render void the election of another candidate.

87. There is no doubt that there is no direct evidence regarding the improper acceptance of the Respondent No. 1's nomination materially affecting the election of the Respondent No. 2 to the General Seat. The language of Section 100(1)(c) would show that it is not necessary for a Petitioner in such a case to prove that the result of the Election has been materially affected so far as both the candidates are concerned. The Election to the Reserved and the non-reserved seat is only one Election and not two separate Elections. There is a catena of cases supporting this view. In a multiple member Constituency, the election is only one election for all the Seats and not separate election for each seat. My view is based on the Illustration under Section 54 of the Representation of People Act, where the election is spoken of as "an election in a Constituency to fill four seats". It is obvious, the election of a candidate not qualified to fill a seat in the Legislature, obviously materially affects the result of the whole election. This is sufficient to hold that the election had been materially affected.

88. Even if it is assumed that the election to both the seats is not one single election, and it was necessary to show that the election of the respondent No. 2 was materially affected by improper acceptance of the nomination of the Respondent No. 1, I think this is sufficiently proved by the number of votes each

candidate obtained at the last election. The Respondent No. 2 obtained 18627 votes, Respondent No. 1, 14442 votes, Respondent No. 3, 6604 votes, Respondent No. 4, 7877 votes, and the Petitioner 7811 votes.

89. In the case of an improper rejection of a nomination also, the burden of proof of the fact that the election had been materially affected, lies on the Petitioner. It was realized by the Tribunals, who had to administer the law placing the burden of proof in such a case on the Petitioner, that it was impossible to obtain proof to discharge such burden. The evidence which could possibly be adduced, would be in the nature of speculatory or conjectural evidence. The difficulty was, therefore, got over by introducing the fiction of a presumption that in such cases (of improper rejection), the result of the Election is materially affected. It was realized by the Tribunals that it was impossible for any person to prove as a fact that the result of an election had been materially affected in such a case. The presumption was supported on the argument that the electorate was deprived of its rights to choose a candidate from amongst the candidates of whom the candidate whose nomination was rejected was one.

90. In my opinion, in a case like the present one, where the candidate whose nomination is held to have been improperly accepted, secures a large number of votes, the same presumption must be held to arise, for it is impossible to expect any but conjectural evidence to prove that the votes which were cast in favour of an ineligible candidate would have been cast in favour of certain other candidate. Had the Respondent No. 2 obtained more than 50 per cent. votes out of the total number of votes, available in the Constituency, it could be definitely said that his election could not have been materially affected.

91. Vasant Rao, Respondent No. 1, got 14442 votes. To whom would these votes have gone, if the Respondent No. 1 had not been one of the contesting candidates? It cannot be said that they would necessarily have gone to the candidate belonging to the Scheduled Tribes. In my opinion, in a case like this, where such a large number of votes is made available to the contesting candidates, it is impossible to say that this would not have materially affected the result of the election to the unreserved seat. On account of the large number of votes available to the contestants, this would appear to be a case not dis-similar to the case of improper rejection, in which case, a presumption is made in favour of the result of the Election being materially affected.

92. The learned counsel for the Respondent No. 2 drew my attention to the decision of the Election Tribunal, Rajasthan, Bikaner, in *Chandra Nath* Vs. *Kunwar Jaswantsingh and others* (The Gazette of India Extraordinary, Page 165, Election Petition No. 226 of 1952, decided on 15th January 1953). He argued that though this was the case of an improper rejection of a nomination, the Tribunal held that the presumption that the result of the election had been materially affected by the improper rejection of the nomination, was rebutted by the successful candidates adducing evidence to prove that the election had been on party lines, and even if the rejected candidate was in the field, that would not have affected the number of votes polled by him. In my opinion, this is a matter of mere speculation. I have not come across any other decision which has taken this view, and even though this is a case of improper acceptance, on account of the large number of votes which would have been available to the contesting candidates, it would not be possible to say that the result of the Election of the Respondent No. 2 would not have been affected in any case. I am fully aware of the fact that the burden of proof is on the petitioner in such a case, but he can discharge the burden only in the way a petitioner alleging "improper rejection" could have discharged, and if he merely establishes that such a large number of votes would have been available to the contesting candidates that by the addition of such votes, it could have been possible for the contesting candidates to poll more votes than what the elected candidate obtained, it shall have to be held that the result of the election had been materially affected.

93. In my opinion, therefore, the result of the election is materially affected by the improper acceptance of the nomination of Respondent No. 1 and the election must be declared wholly void under section 100(1)(c) of the Representation of People Act, 1951. The learned counsel for the Respondent No. 2 asked me to declare only the election of Respondent No. 1 wholly void under section 100(1)(c) if that section was held to be applicable by me. He contended that I would not be justified in declaring the election of the Respondent No. 2 void, since nothing had been proved against the Respondent No. 2 to impose this penalty on him. In a double-member Constituency, the election is only one, and

if under section 100(1)(c), an improper acceptance or rejection of any nomination is shown, the election of both has to be set aside. This is a very unfortunate result of the law, but the Tribunal cannot help it. We had made the same observations in the Election Petition Case No. 4 of 1952 decided by us on 19th February 1953 at Jabalpur (*Shri Jagannath Vs. Achwal Pandurang and others*) and I have to repeat it.

94. As an instance of an illegal practice the petitioner pleaded that the respondent No. 2 had exhibited poster like Ex. P-44 having a reference to the election, which does not bear on its face the name and address of the printer and publisher thereof. The poster does bear on its face the name and address of the printer but not of the publisher. As the name and address of both the printer and publisher is not absent but only the name and address of the publisher is absent, the poster cannot come within the mischief of sub-section 3 of section 125, and issuing of such a poster cannot be treated as an illegal practice.

95. The result is that the petition succeeds and is allowed and the election to the Lakhnadon Legislative Assembly Constituency held on 29th December 1951 is declared wholly void.

(Sd.) N. H. MAJUMDAR, *Chairman*,
Election Tribunal, Jabalpur at Nagpur,

The 30th April 1953.

I have had the advantage of perusing the Order by the learned Chairman and I am in agreement with his findings on almost all the questions raised in the petition excepting one relating to the major corrupt practice of undue influence.

2. The respondent No. 2 was also charged with another corrupt practice of undue influence as defined under Section 123 sub-clause (2) of the Representation of People Act. It is alleged that he had attempted to interfere with the free exercise of the Petitioner's right (electoral right) to contest the Election.

3. Exhs. P-27, P-28 and P-29 were produced in support of these allegations. Ex. P-27 is the letter dated 21st September 1951, written by the Respondent No. 2 himself to Thakur Chuamansingh (P.W. 20), the father of the petitioner. The relevant statements contained in the said letter are:—

(1) On a request from the Respondent No. 2, the Petitioner and his father had withdrawn from the contest in the Elections of 1936 and 1946.

(2) That the respondent No. 2 will ever remain conscious of the obligations under which he was put by the Petitioner and his father by their withdrawal from the contest in the two previous Elections.

(3) That Churamansingh will see that the Petitioner withdrew from the contest, although he may be willing or unwilling to do so.

It was further stated in the said letter that the respondent No. 2 had directed their common friend Ramji Bhai of Chhindwara to talk to Thakur Churamansingh and that Shri P. L. Bhargava, Bar-at-law, Seoni, had also assured the Respondent No. 2 that he (Shri P. L. Bhargava) will talk on the subject to Thakur Churamansingh.

4. Ex. P-28 dated 24th September 1951 was the letter written by Ramjibhai to Thakur Churamansingh. The contents of this letter indicate very clearly that it was in pursuance of a letter received by Ramjibhai from the Respondent No. 2. There is thus no doubt, that the Respondent No. 2 wrote the letter, Ex-P-27, himself and Ramjibhai had written the letter, Ex. P-28 as per directions of the Respondent No. 2. The third letter is dated 16th November 1951, written by one Babulal of Nagpur to Thakur Churamansingh.

5. Ex. P-27 is admitted and Ex. P-28 was not disputed. In the intial stage of his evidence, the Respondent No. 2 had denied the letter, Ex. P-29, and added that he did not know its writer Babulal, nor had he taken or attempted to procure any assistance from Babulal or his sons to get the Petitioner withdraw from the contest; but under pressure of cross-examination, he had to admit when his own letters were shown to him, that Radheshyam, one of the sons of the said Babulal, had met the Respondent No. 2 on three occasions, firstly at Nagpur and then at Seoni, at the time of the nomination and on one more occasion, the time and place of which was not disclosed. According to the Respondent No. 2, Radheshyam came to him in a semi-drunken condition and offered unsolicited assistance to the Respondent No. 2 to get the Petitioner withdraw from the contest and as Radheshayam insisted on having a letter from the Respondent

No. 2, the letter wrote a condolence letter to Thakur Churamansingh and handed it over to Radheyshyam to be delivered to Thakur Churamansingh. Thereafter, on 11th November 1951, Radheyshyam had again appeared and the Respondent No. 2 had again given a letter, Ex. P-62, dated 11th November 1951 to be delivered to Thakur Churamansingh. Five days there-after, i.e. on 16th November 1951, Babulal wrote the letter, Ex. P-29 to Thakur Churamansingh.

6. It is clear from these facts, that the Respondent No. 2 knew Babulal and his sons and he also knew that the Petitioner was residing in the house of Babulal during the period when he was receiving his education at Nagpur. It is difficult to believe that an absolutely unknown person, in a semi-drunken condition, would appear in the Camp of a Minister and offer assistance in matters relating to the Elections and the Minister would readily agree to take his assistance, unless it was known to him (here the Respondent No. 2) that the person approaching had considerable influence with the Petitioner or his father. I am inclined to hold that the Respondent No. 2 knew Babulal and his sons and he also knew that Babulal and his sons were likely to influence the Petitioner to withdraw from the contest.

7. According to Thakur Churamansingh (P.W. 20), Shri Ram Rao, a senior member of the Seoni Bar, and one of the workers of the Respondent No. 2, had met Thakur Churamansingh and had expressed surprise at the Petitioner's standing for election against the Respondent No. 2. Shri Ram Rao had asked Thakur Churamansingh to advise the Petitioner not to contest the election against the Respondent No. 2, and had further directed Thakur Churamansingh to meet the Respondent No. 2 in the Circuit House, Seoni. Accordingly, when the Respondent No. 2 was camping at the Circuit House, Seoni, Thakur Churamansingh went to him; and there again, the Respondent No. 2 had asked him to ask the Petitioner to withdraw from the contest. Thakur Churamansingh has, however, admitted that it was a friendly conversation between the two; and no pressure was brought on him to persuade his son to withdraw from the contest.

8. It is not disputed that the Respondent No. 2 had wished the Petitioner to withdraw; and with that end in view, he had written Ex. P-27 to Thakur Churamansingh, had talked to him personally, and had sought the assistance of Ramji Bhai, Babulal, his sons and others.

9. The question is whether all that the Respondent No. 2 did, amounts to an attempt to interfere with the free exercise of the Petitioner's right (electoral rights) to contest the Election.

10. The main purpose of enacting the Representation of the Peoples Act was to secure free and fair elections as, that is an essential prerequisite of a Democratic Government. It is for that purpose that the definition of "Corrupt Practices" has been made so wide as to include almost every conceivable act, likely to cause undue influence or put pressure on the voters. In some cases, even an attempt to do certain things, has been included within the meaning of the term "corrupt practices".

11. Sub-clause (2) of Section 123 of the Act, is as under:—

> "Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent..... .....with the free exercise of any electoral right;" and
>
> "Electoral Right" as defined under sub-clause (d) of Section 79 of the Act means, "the right of a person to stand or not to stand or to withdraw from being a candidate or to vote or refrain from voting at an Election." It follows from these two definitions, that if a candidate is found to have made an attempt to interfere with the free exercise of the right of any other person to stand as a candidate, that will amount to major corrupt practice.

12. It was argued for the Respondent No. 2 that the word 'Interference' used in sub-clause (2) of Section 123 of the Act, implies some act on the part of the candidate over and above mere persuation or advice; but it cannot also be denied that persuation, if it takes the form of undue pressure on the mind of a person, is bound to create direct act for that purpose. In the case before us, the Respondent No. 2 certainly made an attempt to bring all kinds of pressure to bear on the mind of the Petitioner with a view to secure his withdrawal from the contest. The three letters, Exs. P-27, P-28 and P-29 were shown to the Petitioner by his father and he was asked to withdraw from the contest. Taking into consideration the past relations between the respondent No. 2 and the family of the Petitioner, and taking also into consideration the various forces that were let loose to work on the mind of the petitioner, I am inclined to think that

writing of these three letters, coupled with the personal conversation between the Respondent No. 2 and the father of the Petitioner and the approach made to the Petitioner by Radheyshyam, (all these facts taken together) will certainly amount to an attempt to interfere on the part of the Respondent No. 2 with the *free* exercise of the Petitioner's right to contest at the Elections. In my opinion, therefore, the Respondent No. 2 is guilty of a major corrupt practice of undue influence as defined in sub-clause (2) of Section 123 of the Act.

(Sd.) G. A. PHADKE, *Member*

The 30th April 1953.

1. By the courtsey of the Chairman I have had the advantage of reading the order proposed to be passed by the learned Chairman and my other colleague.

2. I regret I am unable to agree with them on the finding they propose to give on issue one as to the age of respondent No. 1, Vasantrao.

3. On this issue No. 1 they hold that respondent No. 1, Vasantrao, was not of the qualifying age when he presented his nomination papers. Whereas I am of opinion that there is quite satisfactory, cogent and conclusive evidence to prove that respondent No. 1 was of the qualifying age when he presented his nomination papers.

4. I give my reasons for so holding hereinafter. Dealing with the issue No. 1, namely, the age of the respondent No. 1, Vasantrao.

5. The evidence in this connection consists of (a) the entry in the certified copy of Kotwal's register of births and deaths of village Vadhona, and (b) certified copies of the registers of schools, colleges and universities, in which the age of the respondent No. 1 has been given. As against this the respondent No. 1 has examined his father, R1W2 and two others from the village Limarua, R1W3 and R1W4.

6. The electoral roll in which the age of respondent No. 1 is shown to be above 25 years, is prepared with great and meticullous care, with checks and counter-checks at each stage.

7. The rules on the subject are to be found in the Manual of Election law, *vide* Part II at page 157.

8. These rules deal with the publication of the electoral rolls, after the draft electoral roll has been prepared. They are then published, inviting claims and objections. Forms for such claims and objections are also laid down. The time for making such claims and objections is also laid down, *vide* Rules 8 to 17. The decision of the revising authority regarding the claims and objections is declared to be final *vide* Rule 18. Also Section 36(7) (a) declares the same to be conclusive.

9. Thereafter, the Rule 19 provides for the final publication of the electoral rolls. By rule 20, the Election Commission alone is authorised to amend any entry in this final electoral roll, on the application by a claimant, on payment of a fee of Rs. 50. The Election Commission after making such enquiry into the claims, it thinks necessary, passes its orders.

10. It will be noticed that when the claimant applies for amendment of the electoral roll, he has to give documentary proof of age, by filling original or certified copies, *vide* Form VI column 3 and Form VIII column 4.

11. The electoral roll prepared with such great care, and meticullous checks and counter checks, and with verifications at various stages, is declared to be *final*. This should be so, otherwise no end of trouble and expenses would be incurred by the State, which could not have been the intention of the Legislatures.

12. I find also that it has been held that these entries in the electoral rolls cannot be questioned before the tribunal *vide* election cases, Sen and Poddar, page 358; also Shreenivasan and Mathubudhan—the Representation of Peoples Act, page 195.

13. No doubt, there are conflicting decisions on this matter, but for reasons given above I agree, with due respect, with the decisions which give finality to the entries in electoral rolls, and I hold that the tribunal cannot go into the question of age, shown in the electoral roll, which is final and conclusive.

14. I may state here that I do not base my decision on the plea of Estoppel, but I arrive at the above conclusion, on consideration of the rules on the subject and the authorities cited above.

15. The argument that the entry in the electoral roll may be final is only so far as the right to vote at an election is concerned, and not for the qualifying age of 25 years and above, for standing as a candidate for an election. But if the age given in the electoral roll is final and conclusive, and cannot be disputed before the tribunal, and if that age so entered in the electoral roll, goes to show that the candidate must also be of the qualifying age of 25 years and above, at the time of submitting his nomination, the age so given in the electoral roll, must be final and conclusive, as well for the nomination of a candidate for election to the State Legislature. It will be illogical to hold otherwise.

16. The burden of proving that, the age of the respondent No. 1 given in the electoral roll is incorrect, and that the respondent No. 1 was not of the qualifying age of 25 years and above, lay heavily on the petitioner. More so, as false statement in the nomination papers as regards age, entails severe penalty.

17. Also the evidence produced should be of the strict nature as required in criminal cases: see page 239—Doablas "Election and Election Petitions". It may be stated that in a criminal case, the burden of proof never shifts, and always lies and continues to lie on the prosecution, and in the present case on the petitioner.

18. The petitioner has produced, to prove the age of the Respondent No. 1, certified copies of the Kotwal's register of births and deaths of village Vadhona, to show that the petitioner was born in village Vadhona, as also by certified copies of entries in school and college registers when applying for admission and also by school leaving certificate, *vide* Exh. P.

19. The entry in Kotwal's register of village Vadhona, Ex. P, shows that a son was born to one Mangroo Gond. The entry does not give the name of the father of Mangroo. Mangroo is a common name in villages, not only of Gonds but of any other castes. There is no evidence to prove that the entry relates to the father of respondent No. 1. There is no evidence, also, to show that on the date given in the Kotwal's register, the petitioner's father, and mother were living in village Vadhona. In the entry it is shown that the petitioner and his family were living in Limarua at the time. No person, from village Vadhona, has been examined by the petitioner to show that respondent No. 1 was born in village Vadhona, either from the neighbours, or from any other residents of the village. Thus the entry is conclusive and irrelevant to prove the date of birth of respondent No. 1.

20. Then there remains only the certified copies of registers from schools, colleges and University, Exh.

21. I am not impressed by the number of these certified copies, because the mistake of any entry, in the first certificate, will automatically be carried over in the subsequent certificates.

22. I may mention here that the first certificate filed is from a private school in Chhindwara and is of no evidentiary value. The subsequent entries based upon this initial entry would also suffer accordingly.

23. The question, therefore, is whether the entry in the first certificate and other certificates filed is correct, reliable and conclusive, and worthy of taking into consideration, as proof of age of respondent No. 1, in a matter of such great importance as the validity of his nomination paper, as against the entry about his age, in the electoral roll which is prepared with such great care, as I have already shown above.

24. The age entry in the school register is generally given in a haphazard way, and cannot be taken as correct, as no importance is attached to the matter at that time, and any approximate date is given.

25. Generally in villages, and among village people, few care to remember the date of birth of children or their age.

26. We find even about some of our famous persons who are born in villages, and who have become well-known and famous in their later life, there is some controversy about their age.

27. Judges, in Courts of law, are every day confronted with witnesses who have fantastic ideas as to their age, and the Courts are required to record their estimates of the age of witnesses, which also are approximate in character.

28. As regards the importance to be attached to age given in school and University records, Daobia, in his book "Election and Election Petition", age page 118 has cited a case, regarding "the method of proof or disproof of age, medical and oral evidence may be enough to disprove the correctness of entries regarding the age in school and University records".

29. It is said that in view of these entries in the registers of schools, colleges and University, the burden is shifted on to the respondent No. 1.

30. I have already shown above that in a criminal case the burden never shifts; it lies throughout on the prosecution, and in this case on the petitioner.

31. I, therefore, give no value or importance to this evidence of age in school, college and University records, more so in view of the age given in the electoral rolls, and also in view of the oral evidence produced by respondent No. 1.

32. I hold that the petitioner has not discharged by satisfactory evidence the burden of proof which lay on him to show that, respondent No. 1 was not of the qualifying age of 25 years and above, as shown in the electoral roll.

33. As against this failure of the petitioner to discharge the burden which lies so heavily upon him, the respondent No. 1 has produced reliable, cogent, and conclusive evidence to prove that he was born in village Limarua, and was about 3 months of age when the great flood in Narmada river occured in the montn of September 1926.

34. The evidence adduced by respondent No. 1, as to his age, consists his father, Mangroo, R1W2, W3 and W4.

35. Mangroo, father of respondent No. 1, has been examined as R1W2 and has stated that he was in railway service and was posted in Limarua for five years from *June* 1925 and again later, for three years more.

36. Limarua is a roadside flag station and was situated in the valley at the foot of a small hill, on the top of which the village Limarua is situated.

37. There is a small brook at the foot of the hill and the railway station is situated on the other side of the brook.

38. In September 1926 on Dol Ghiaras day (21 September 1926) (*vide* chronological table) and (the C.P. Gazette for September 1926), it started raining heavily and the Narmada river was in flood. On the third day, the railway station was surrounded by water on all sides, and the inmates of the hut, Mangroo and his family, were in imminent danger of being washed away, and drowned by the waters.

39. On seeing this plight of the family a rescue party arrived from the village, and removed the family from danger.

40. At the time Mangroo had a daughter, namely Tara, and his son, Vasant, respondent No. 1, about 3 months of age, and his wife and parents.

41. One Bhura R1W4 who was one of the members of the rescue party tied Tara on his back and Gokul Meher, R1W3, tied the boy, Vasant, three months of age, round his neck with a Dhoti. Others of the rescue party, saved Mangroo and other inmates of the family to a place of safety.

42. Thus the age of respondent No. 1 is fixed, and it is seen from the above evidence that respondent No. 1, Vasantrao, was born in or about March 1926, and was of qualifying age of 25 years and above, when he filed his nomination papers.

43. Incidently, the name Vasant was given to respondent No. 1 as he was born in the VASANT season.

44. The incident of flood, the manner and time of the rescue of the family in such a dramatic and vivid circumstances, and Mangroo's position in the railway service in charge of a roadside flag station, would be remembered by the village people for their life time. It would be talk of the town, now and again.

45. R1W2, Mangroo, born in village Vadhona, has risen from his small beginning, by the dint of character and intelligence to his present position and status, as Secretary and Propagandist of the Gond Mahasabha and Adimjathia Sangh, for the social and political uplift of the depressed classes. He is also a member of the Central Legislature.

46. The cross-examination of these witnesses has shown nothing as to why they should not be believed.

47. It is in evidence that Mangroo came to Limarua in June 1925, in the railway service, and remained there for five years with his family and parents. It is, therefore, nothing surprising that R1, Vasantrao, should be born in Limarua and not in Vadhona. It appears that Mangroo besides being stationed at Limarua in railway service for five years at first, and again for three years more, in between and after, he had occasion to go to this village on his way to Mandla, later as the Secretary of Gond Mahasabha and also of Adimjathia Sangh for propaganda and other work. He had to pass through Limarua. Thus, Mangroo was never out of sight and remembrance of the villagers of Limarua.

48. The evidence of R1W3 and W4 is sought to be impeached for the reason that these witnesses do not remember about all the children of family of Mangroo, but that would be a matter of no consequence, or importance, at this distance of time (25 or 26 years), compared to the flood incident.

49. It is argued that Mangroo and respondent No. 1 came to know in 1945 the correct age and the mistake made and yet continued the mistake. I have, however, shown that all this is due to indifference and wrong notion to give the same date as in former registers.

50. Mangroo has been cross-examined at length about the entries in the application forms for admission to schools. He has, however, shown that he was indifferent about these entries. He had denied his signatures on some of them. It happens that sometime, in the absence of the guardian, some one puts down the name of the guardian in the appropriato column.

51. It was argued that the petitioner had filed interrogatories calling upon respondent No. 1 to state where and when he was born. The reply of Counsel of respondent No. 1 was that the interrogatories were not in order at that stage and should not be allowed. The respondent No. 1's counsel stated that if ordered by the Court to reply to these interrogatories, he would do so, but he contended that the petitioner was not entitled to ask for these informations by way of interrogatories. The tribunal decided to reject the petitioner's application for interrogatories. Had the tribunal ordered respondent No. 1 to give the information and if he had refused to give the necessary information, then same inference could have been drawn against him, but the tribunal passed no such order for the respondent No. 1 to reply to that part of the interrogatories and no adverse inference can legitimately be drawn against respondent No. 1.

52. It appears that both Mangroo and Vasant filed their nomination papers for election, former for the Central Legislature, and the latter for the Assembly.

53. It then became necessary for them to ascertain accurately the dates of birth.

54. The dramatic circumstances of the flood were recalled and the time of birth of respondent No. 1 was fixed with reference to it.

55. Corroboration was further sought by ascertaining the dates of birth of other children at Vadhona, namely, Tara, born before respondent No. 1 and another son after R1.

56. Mangroo has deposed that no register of births and deaths was maintained in the railway station at Limarua, and hence no entry of date of birth of respondent No. 1 could be given. He has also stated that he himself made no report of birth of his children. However, it is also the duty of the Kotwal and Mukkodam to make entries, in their registers of birth and deaths in village Vadhona and, therefore, the respondent No. 1 made enquiries about birth of Tara and the son born after him. At Limarua also respondent No. 1 made enquiries about entry of the date of his birth. The respondent No. 1 was, however, informed that the Kotwal's register was not available in Limarua.

57. There is also evidence of respondent No. 1 as to his age. At best his statement about his age can only be of any hearsay nature.

58. He was put to a grueling test about his knowledge of addition and subtraction as regards the various entries in the different registers of schools, colleges, etc. and he has *failed* to stand the test.

59. This, however, does not and cannot derogate from the positive, reliable and conclusive evidence about the connection of respondent No. 1's date of birth with the flood incidence and its date. I, therefore, hold that the date of birth given in the electoral roll in the nomination paper is correct and that respondent No. 1 was of the qualifying age to stand for the election.

60. To sum up I find (1) that the entries in the electoral roll as to the age of respondent No. 1 is final, conclusive and is not open to challenge before the tribunal, (2) that the petitioner has not discharged the heavy burden of proving the fact that the respondent was not of the qualifying age of 25 years and above. The only evidence produced by him is that of unreliable entries in the school registers. The entry in the Kotwal's registers not being shown to relate to respondent 1's father, Mangroo, (3) that the oral evidence adduced by and on behalf of the respondent No. 1 as to his date of birth is reliable, cogent, and conclusive, and (4) that the evidence of the electoral roll is conclusive.

61. In view of the above decision about the age of respondent No. 1, it becomes unnecessary to discuss the other part of issue No. 1, or to enter upon a discussion of the applicability of Section 100 and 101 of the Representation of Peoples Act.

62. The petitioner has charged the respondent No. 2 with the corrupt practice of bribery under Section 123(1)(a) and (2), undue influence and in support of that charge, produced a letter, Exh. P.27, written by the respondent No. 2 to the father of the petitioner. He has also produced a letter addressed to the petitioner's father, Exh. P.28, written by Ramji and a letter Exh. P.29, written by one Babulal, to petitioner's father. These letters are dated 21st September, 1951, 24th September, 1951 and 16th January, 1951, respectively.

63. The letter of respondent No. 2 to the father of the petitioner is dated 21st September, 1951, long before the constituency was called upon to elect its representative. This was on 15th November, 1951. This must be borne in mind in considering if this letter offends the provision of Section 123(1)(a).

64. It is in evidence that the respondent No. 2 has been from a long time on most cordial terms with the petitioner's father and that the petitioner has been like a son to respondent No. 2.

65. It is also in evidence that petitioner's father and the petitioner have been Congress minded and have always supported the Congress cause, and Congress candidates in the various elections held before the present one.

66. A person who wishes to stand for election tries sometime before the constituency is called upon to elect its representative to see what chances he has for success in the election, who are likely to be the candidates to oppose him and the possibility of influence of such persons, etc., etc. In doing so, he may approach likely candidates to see if they are serious and discuss with them the chances of success of each of them and his own chances.

67. The question of *'Undue Influence'* or interference, cannot arise as respondent No. 2's letter was long before the date when the constituency was called upon to elect its representative. There could not have been at the time any *candidates*. Even if it be so that he was influenced it cannot be said to be *undue* influence.

68. The father of the petitioner to whom Exh. P-27 was addressed by respondent No. 2, has said in his deposition "respondent No. 2 never brought any influence on me to ask my son to withdraw from the contest. It was only due to our friendly relation that he asked me to advise my son not to stand against him".

69. The petitioner, in his deposition, says nothing about any influence having been exercised over him by the respondent No. 2. In fact, about letter Exh. P-27 he says nothing about how it affected him when his father showed him Exh. P.27.

70. A person wishing to stand for election begins to nurse his constituency, sometimes a year or two before the life of a legislature is to expire.

71. The definition of candidate is given in the Representation of the Peoples Act, Section 79(b). No definite date is given in this definition for the time *"when the election is in prospect"*. It should be surely be so only from the time when definitely the constituency is called upon to elect its representative, which in the present case was on 5th November, 1951.

72. Therefore, neither respondent No. 2 nor the petitioner can be said to be *"Candidates"*, until after this date of 5th November, 1951. They, thus, do not attract the provisions of Section 123(1) of the Representation of Peoples Act. Therefore, anything done 'by candidates' before 5th November, 1951 cannot offend the provision of Section 123(1)(2).

73. Thus the letter Exh. P.27, dated 21st September, 1951 of respondent No. 2 to the petitioner's father long before 5th November, 1951 does not come under the purview of the above-mentioned provision of law.

74. Then there is the letter dated 24th September, 1951, Exh. P.28, of Ramjibhai. This was sent to the petitioner's father and is colourless. It merely says that the petitioner should be advised by the father not to stand against *Congress* and asks for the *father's views* on the matter. I see nothing in this letter which offends, in any way, the provision of Section 23.

75. Again there is the letter dated 16th November, 1951, Exh. P-29, of Babulal to the petitioner's father, more than two months after the respondent's letter dated 21st September, 1951, and after the date for nomination, namely, 14th November, 1951. The respondent No. 2 has deposed that he does not know Babulal and has never met him, much less asked him to intervene in the matter on his behalf. Then why this letter of Babulal?

76. It seems to me that there can be only two or three reasons for such a letter, in the circumstances stated by the respondent No. 2, "that he does not know Babulal".

77. He may have written this letter either from over enthusiasm for the Congress cause, or knowing that by the time of writing this letter the tendency of the Electorate in favour of the Congress was apparent and that the enthusiasm for the Congress cause had now waned, to save the petitioner and his father from the humiliation of a defeat, and the futility of spending money over a loosing concern, by putting the raw and inexperienced petitioner, against a person of the position and status of a veteran Congressman, and hardened election campaignor.

78. Again, it appears that though the family of the petitioner and the petitioner himself were Congress-minded had changed their affection for the Congress and Congress cause. It may be that this was due to the family having lost their Malbuzari villages at the hands of the Congress Government. Or it may be due to the prevalent belief in some quarters that the Congress cause was not so very popular and that the Congress would not be returned again to power. Thus the petitioner for one reason or the other decided to oppose the Congress at the election and stood as an Independent Candidate.

79. Babulal is a close friend of the family of the petitioner. He has also close business connection with the father of the petitioner. The petitioner, while attending the college at Nagpur had put up with Babulal. Thus Babulal was closely interested in the petitioner.

80. A person in the position and status of respondent No. 2 is likely to have enemies, both because of his being a member of Cabinet, and due to his personal relations in life. Again, he will have opposition from the parties opposed to the Congress, as election was fought on party lines. No wonder, if some of these hostile elements took hold of Babulal to queer the election pitch of respondent No. 2's election by inducing him to send a letter Exh. P.28, *even after the date of nomination, dated 14th November,* 1951.

81. The petitioner has not examined either Babulal or Ramjibhai, but has only sought to prove the signature on the letters, Exh. P.28 and P.29. It must also be remembered that the letters were not filed with the petition, as it should have been, as they were in the possession of the father of the petitioner, who is in no way hostile to the petitioner, and the letters would have been handed over by the father of the son, on the latter's mere asking.

82. It was incumbent on the petitioner on whom the burden lay heavily, to put these persons, Ramjibhai and Babulal, in the witness box to afford an opportunity to respondent No. 2 to crossexamine them and ascertain the various points shown by me.

83. Petitioner, instead of producing the letters directly, enacted a farce of summoning his father to produce the letters.

84. These tactics of the petitioner to have withheld the same, until the tribunal pointed out the penalty they would have incurred for not filing the letters till at a late stage, depriving the respondent No. 2 of an opportunity to give a cogent reply, in his written statement, and deprived him of his right to cross-examine Babulal on the contents and motive with which he sent the letters to petitioner's father. Savoures of petifogging and reserves a bad taste in the mouth.

85. I am, therefore, not prepared to give any weight, or consideration, to these letters which have not been proved by examination of the writers in open court to enable the tribunal to judge as to the weight to be given to them.

86. Mere proof of the signature on the document, from the nature of which serious consequences are entailed, cannot be considered by the tribunal, and must be rejected from consideration. I, therefore, give no weight to them and reject them from consideration.

87. The petitioner has given no reason for not putting the writers of Exh. P.28 and P.29 in the witness box, such as the hostility to the petitioner, or for any other valid and acceptable reason.

88. The petitioner's father, who must be familiar with Babulal's handwriting, owing to the business relations with him and close friendship, identifies Ramjibhai's handwriting but says, "I cannot say if Exh. P-29 is in Babulal's handwriting". Then who wrote the contents of Babulal's letter?

89. I have given the above considerations for rejecting Exh. P.28 and P.29 from consideration in addition to what my colleagues have given in their judgment about this matter.

90. I am in full agreement with what they have stated about these letters.

91. I am also in agreement with all they have stated in the various issues, except about the age of respondent No. 1 and I need not say anything more about the same.

92. In view of what I have said already my order on the petition is that the petition be dismissed with all costs on the petitioner.

(Sd.) M. M. MULLNA—*Member.*

The 30th April, 1953.

ORDER MADE BY THE ELECTION TRIBUNAL

We have separately recorded our Orders in this case. Under Section 104 of the Representation of Peoples Act, in terms of the views of the majority, the Tribunal orders that the election petition succeeds and it hereby is allowed. We declare the election of the Lakhnadon Legislative Assembly Constituency to be wholly void. The Order thus shall have the effect of setting aside the election of both the Respondents Nos. 1 and 2.

As regards the costs, we order the Respondent No. 1 to bear the costs of the petitioner and other Respondents in addition to his own. Pleaders' fee Rs. 250.

(Sd.) N. H. MUJUMDAR, *Chairman,*
Election Tribunal, Jabalpur at Nagpur.
(Sd.) G. A. PHADKE, *Member,*
Election Tribunal, Jabalpur at Nagpur.
(Sd.) M. M. MULLNA—*Member,*
Election Tribunal, Jabalpur at Nagpur.

The 30th April, 1953

SCHEDULE OF COSTS.

ELECTION PETITION CASE NO. 1 OF 1952.

	Petitioner.	Respondent No. 1.	Respondent No. 2.	Respondent No. 3.	Respondent No. 4.	Respondent No. 6.
1. Publication charges. . . .	853-14-0	..	..	..	..	..
2. Stamp for power . . .	3-0-0	2-0-0	2-0-0	1-0-0	1-0-0	1-0-0
3. Process-fees.	38-4-0	4-8-0	22-8-0	..	..	..
4. Subsistence for witnesses. . .	698-9-0	78-4-0	299-3-0	..	..	..
5. Commissioner's fees. . . .	20-0-0	..	..	..	..	..
6. Applications and Affidavits . .	10-0-0	4-0-0	4-0-4	..	1-0-0	..
7. Writing charges.	4-14-0	1-4-0	0-14-0	..	..	..
8. Exhibits.	42-2-0	1-0-0	4-12-0	..	..	..
9. Pleader's fee. (Fixed). . .	250-0-0	..	..	..	..	..
Total . .	1921-11-0	89-2-0	333-5-0	1-0-0	2-0-0	1-0-0

The 30th April 1953.

(Sd.) N. H. MUJUMDAR, *Chairman*,
Election Tribunal, Jabalpur at Nagpur

ANNEXURE I

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 150 OF 1953

Durga Shankar Mehta—*Appellant*

Versus

Thakur Raghuraj Singh and others—Respondents.

Appeal by Special Leave granted by Order of this Court, dated the 15th May 1953 from the Judgment and Order, dated the 30th April 1953 of the Election Tribunal Jabalpur at Nagpur in Election Petition No. 1 of 1952.

The 19th day of May, 1954

PRESENT:

The Hon'ble Mr. Chief Justice Mehr Chand Mahajan,

The Hon'ble Mr. Justice Bijan Kumar Mukherjea,

The Hon'ble Mr. Justice Vivian Bose,

The Hon'ble Mr. Justice N. H. Bhagwati,

The Hon'ble Mr. Justice T. L. Venkatarama Ayyar.

For the Appellant:—Messrs B. Sen, T. P. Naik and I. N. Shroff, Advocates.

For RespondentNo. 1:—Messrs R. M. Hajarnavis, J. B. Dadachanji and Rajinder Narain, Advocates.

JUDGMENT

The Judgment of the Court was delivered by—

Mukherjea, J.—This appeal, which has come before us on special leave, is directed against the judgment and order of the Election Tribunal, Jabalpur at Nagpur, dated the 30th April 1953, whereby the Tribunal declared the election held on the 29th December 1951, for the double member Lakhnadon Legislative Assembly Constituency, to be wholly void under section 100(1)(c) of the Representation of the People Act (hereinafter called 'The Act').

To appreciate the contentions that have been raised by the parties to this appeal, it would be necessary to state briefly the material facts. The Lakhnadon Legislative Assembly Constituency in Madhya Pradesh is a double member constituency, one of the seats in which is reserved for scheduled tribes. The appellant and respondents Nos. 1, 3, 5 and 7 were duly nominated candidates for the general seat in the said constituency, while respondents Nos. 2, 4 and 6 were nominated for the reserved seat. No objection was taken before the Returning Officer in respect of the nomination of either the appellant or respondent No. 2 Vasant Rao. Out of these eight candidates, respondents Nos. 5, 6 and 7 withdrew their candidature within the prescribed period under section 37 of the Act and the actual contest at the election was between the remaining five candidates, namely, the appellant and respondents Nos. 1 to 4. The votes secured by these five candidates at the polling were found to be as follows:—

(1) The Appellant (General)	..	18,627
(2) Respondent No. 1 (General)	..	7,811
(3) Respondent No. 2 (Reserved)	..	14,442
(4) Respondent No. 3 (Reserved)	..	7,877
(5) Respondent No. 4 (General)	..	6,604

Accordingly the appellant and respondent No. 2 were declared elected to the General and Reserved seat respectively, under section 66 of the Act, and the results were duly published in the Madhya Pradesh Gazette on 8th of February 1952. On the 14th of May 1952 the respondent No. 1 Raghuraj Singh filed an election petition against the appellant and the other respondents, under section 81 of the Act, praying that the said election to the Lakhnadon Legislative Assembly constituency be declared wholly void or in the alternative election of Vasant Rao and/or that of the appellant Durga Shankar Mehta be declared void. There was a string of allegations made in the petition accusing the appellant of various corrupt practices in the matter of securing votes but none of these are material

for our present purpose, as the Tribunal, by a majority, held these allegations to be unfounded and not supported by proper evidence. The substantial ground upon which the petitioner sought to assail the validity of the election was, that the respondent No. 2 Vasant Rao, who was declared duly elected to the Reserved seat in the said constituency was, at all material times, under 25 years of age and was consequently not qualified to be chosen to fill a seat in the Legislative Assembly of a State under Article 173 of the Constitution. This allegation was found to be true by the majority of the Tribunal and by its judgment, dated the 30th of April 1953 the Tribunal came to the conclusion that the act of the Returning Officer in accepting the nomination of Vasant Rao, who was disqualified to be elected a member of the State Legislature under the Constitution, amounted to an improper acceptance of nomination within the meaning of section 100(1)(c) of the Act and as the result of the election was materially affected thereby, the whole election must be pronounced to be void. It is the propriety of this decision that has been challenged before us in this appeal.

Mr. Hazarnavis appearing for the respondent No. 1 before us, took a preliminary point challenging the competency of the appeal. It is contended by the learned counsel, that Article 329(b) of the Constitution ousts the jurisdiction of all ordinary courts in election disputes and provides expressly that no election to either House of Parliament or to either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. It is urged that there can be no challenge to the validity of an election except by way of an election petition, and the authority to which, and the manner in which, such petition is to be presented, have been embodied in the Representation of the People Act which has been enacted by the Parliament under Article 327 of the Constitution. Section 80 of the Act, which is worded almost in the same manner as Article 329(b), provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of this Part"; and section 105 says that "every order of the Tribunal made under this Act shall be final and conclusive". It is contended by the learned counsel that the jurisdiction that is created in the Election Tribunal is a special jurisdiction which can be invoked by an aggrieved party only by means of an election petition and the decision of the Tribunal is final and conclusive.

These arguments, though apparently attractive, appear to us on closer examination to be untenable. We agree with the learned counsel that the right of seeking election and sitting in Parliament or in a State Legislature is a creature of the Constitution and when the Constitution provides a special remedy for enforcing that right, no other remedy by ordinary action in a court of law is available to a person in regard to election disputes. The jurisdiction with which the Election Tribunal is endowed is undoubtedly a special jurisdiction; but once it is held that it is a judicial Tribunal empowered and obliged to deal judicially with disputes arising out of or in connection with election, the overriding power of this court to grant special leave, in proper cases, would certainly be attracted and this power cannot be excluded by any Parliamentary legislation. The non-obstante clause with which Article 329 of the Constitution begins and upon which the respondent's counsel lays so much stress debars us, as it debars any other court in the land, to entertain a suit or a proceeding calling in question any election to the Parliament or the State Legislature. It is the Election Tribunal alone that can decide such disputes, and the proceeding has to be initiated by an election petition and in such manner as may be provided by a statute. But once that Tribunal has made any determination or adjudication on the matter, the powers of this court to interfere by way of special leave can always be exercised. It is now well settled by the majority decision of this court in the case of Bharat Bank Ltd. *v.* Employees of the Bharat Bank Ltd.* that the expression "Tribunal" as used in Article 136 does not mean the same thing as "Court" but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. The only courts or tribunals, which are expressly exempted from the purview of Article 136, are those which are established by or under any law relating to the Armed Forces as laid down in clause (2) of the Article. It is well known that an appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself. The powers given by Article 136 of the Constitution however are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The Article itself is

*1950 S.C.R. 459,

worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting of special leave, against any kind of judgment or order made by a court or tribunal in any cause or matter and the powers could be exercised in spite of the specific provisions for appeal contained in the Constitution or other laws. The Constitution for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this Article in any way. Section 105 of the Representation of the People Act certainly gives finality to the decision of the Election Tribunal so far as that Act is concerned and does not provide for any further appeal but that cannot in any way cut down or affect the overriding powers which this court can exercise in the matter of granting special leave under Article 136 of the Constitution.

This overriding power, which has been vested in the Supreme Court under Article 136 of the Constitution, is in a sense wider than the prerogative right of entertaining an appeal exercised by the Judicial Committee of the Privy Council in England. The prerogative of the Crown can be taken away or curtailed by express legislation and even when there are no clear words in a particular statute expressly taking away the Crown's prerogative of entertaining an appeal but the scheme and purpose of the Act show unmistakably that there was never any intention of creating a Tribunal with the ordinary incident of an appeal to the Crown annexed to it, the Privy Council would not admit an appeal from the decision of such Tribunal. This is illustrated by the decision of the Privy Council in Theberge *v.* Laudry* upon which Mr. Hazarnavis places considerable reliance. In that case the petitioner having been declared duly elected a member to represent the electoral district of Montmanier, in the Legislative Assembly of the Province of Quebec, his election was afterwards, on petition, declared null and void, by judgment of the superior court under the Quebec Controverted Elections Act, 1875, and he himself was declared guilty of corrupt practices. He applied for special leave to appeal to His Majesty in Council. The application was refused and Lord Cairns in delivering the judgment of the Board held, that although the prerogative of the Crown could not be taken away or limited except by express words and the relevant section of the Quebec Controverted Elections Act of 1875 providing that "such judgment shall not be susceptible of appeal" did not mention either the Crown or its prerogative; yet the fair construction of the above Act as also of the previous Act of 1872 was that it was the intention of the Legislature to create a Tribunal for the purpose of trying election petitions in a manner which would make its decision final for all purposes and should not annex to it the incident of its judgment being reviewed by the Crown under its prerogative.

This decision in our opinion does not assist Mr. Hazarnavis. In the first place Article 136 is a constitutional provision which no Parliamentary Legislation can limit or take away. In the second place the provision being one, which overrides ordinary laws, no presumption can arise from words and expressions declaring an adjudication of a particular Tribunal to be final and conclusive, that there was an intention to exclude the exercise of the special powers. As has been said already, the non-obstante clause in Article 329 prohibits challenge to an election either to Parliament or any State Legislature, except in the manner laid down in clause (2) of the Article. But there is no prohibition of the exercise of its powers by the Supreme Court in proper cases under Article 136 of the Constitution against the decision or determination of an Election Tribunal which like all other judicial tribunals comes within the purview of the Article. It is certainly desirable that the decisions on matters of disputed election should, as soon as possible, become final and conclusive so that the constitution of the Legislature may be distinctly and speedily known. But the powers under Article 136 are exercisable only under exceptional circumstances. The Article does not create any general right of appeal from decisions of all tribunals. As regards the decision of this court in Ponnuswami *v.* Returning Officer, Namakkal Constituency and others†, to which reference has been made by the learned counsel, we would only desire to point out that all that this case decided was that the High Court had no jurisdiction, under Article 226 of the Constitution, to interfere by a write of certiorari, with the order of a Returning Officer who was alleged to have wrongly rejected the nomination paper of a particular candidate. It was held that the word "election" in Article 329(b) of the Constitution had been used in the wide sense to connote the entire process, culminating in a candidate's being declared elected and that the scheme of Part XV of the Constitution was that all matters which had the effect of vitiating election should be brought up only after the election was over and by way of an election petition. The particular point, which arises for considera-

*(1876-77) 2 A.C. 102.

†1952 S.C.R. 218.

tion here, was not decided in that case and was expressly left open. In our opinion therefore the preliminary point raised by Mr. Hazarnavis cannot succeed.

Coming now to the appellant's case, Mr. Sen who appeared in support of the appeal, has pressed only one point for our consideration. He plainly stated that he could not challenge the propriety of the finding, arrived at by the majority of the Tribunal, that respondent Vasant Rao was below 25 years of age at all material times. This, he concedes, is a finding of fact and being based on evidence, is not open to challenge before us in an appeal by special leave. His contention in substance is, that there has been no improper acceptance of nomination in the present case, as has been held by the Tribunal and consequently the provision of section 100(1)(c) of the Act would not be attracted to it and the entire election could not have been declared void It is true, says the learned counsel, that on the finding of the Tribunal there has been a violation of or non-compliance with the provision of section 173 of the Constitution and as respondent No. 2 suffers from a constitutional disability by reason of his under-age and is not qualified to be chosen to fill a seat in the Legislative Assembly of a State, his election can undoubtedly be declared void under section 100(2) (c) of the Act, but there was no justification for pronouncing the whole election, including that of the appellant, to be void. The whole controversy thus centres round the point as to whether, upon the facts admitted and proved, the present case comes within the purview of sub-section (1)(c) of section 100 of the Act or of sub-section (2)(c) of the same section. The relevant portions of section 100 of the Act so far as are material for our present purpose may be set out as follows:—

"100. Grounds for declaring election to be void.—

(1) If the Tribunal is of opinion—

(a) .....

(b) .....

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void.

(2) Subject to the provisions of sub-section (3), if the Tribunal is of opinion—

(a) .....

(b) .....

(c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form, the Tribunal shall declare the election of the returned candidate to be void".

The first point for our consideration is whether the nomination of Vasant Rao was improperly accepted by the Returning Officer and that has materially affected the result of the election. It is not suggested on behalf of the respondent that the nomination paper filed by Vasant Rao was in any manner defective. It is admitted that the names and electoral numbers of the candidate and his proposer and seconder as entered there were the same as those entered in the electoral rolls. It is also not disputed that the nomination paper was received within proper time as is laid down in section 33 sub-section (4) of the Act. Section 36 of the Act provides for scrutiny of nominations and under sub-section (2) the Returning Officer has got to examine the nomination papers and decide all objections that may be made to any nomination and he may either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, refuse any nomination on any of the grounds which are specified in the different clauses of the sub-section. The ground mentioned in clause (a) of the sub-section is, that the candidate is not qualified to be chosen to fill the seat under the Constitution or the Act. The contention of the respondent No. 1 is that the nomination of Vasant Rao should have been rejected on this ground and as the Returning Officer did not do that, his act amounted to an improper acceptance of nomination within the meaning of section 100(1)(c) of the Act. We do not think that this contention is sound. If the want of qualification of a candidate does not appear on the face of the nomination paper or of the electoral roll, but is a matter which could be established only by evidence, an enquiry at the stage of scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination.

But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination. This would be apparent from section 36 sub-section (7) of the Act which runs as follows:

"(7) For the purposes of this section—

(a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be, is disqualified under sub-section (2) of section 33".

In other words, the electoral roll is conclusive as to the qualification of the elector except where a disqualification is expressly alleged or proved. The electoral roll in the case of Vasant Rao did describe him as having been of proper age and on the face of it therefore he was fully qualified to be chosen a member of the State Legislative Assembly. As no objection was taken to his nomination before the Returning Officer at the time of scrutiny, the latter was bound to take the entry in the electoral roll as conclusive; and if in these circumstances he did not reject the nomination of Vasant Rao, it cannot be said that this was an improper acceptance of nomination on his part which section 100(1)(c) of the Act contemplates. It would have been an improper acceptance, if the want of qualification was apparent on the electoral roll itself or on the face of the nomination paper and the Returning Officer overlooked that defect or if any objection was raised and enquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the materials placed before him. When neither of these things happened, the acceptance of the nomination by the Returning Officer must be deemed to be a proper acceptance. It is certainly not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all. But the election should be held to be void on the ground of the constitutional disqualifications of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer. In our opinion Mr. Sen is right that a case of this description comes under sub-section (2) (c) of section 100 and not under sub-section (1)(c) of the section as it really amounts to holding an election without complying with the provisions of the Constitution, and that is one of the grounds specified in clause (c) of sub-section (2). The expression "non-compliance with the provisions of the Constitution" is in our opinion sufficiently wide to cover such cases where the question is not one of the improper acceptance or rejection of the nomination by the Returning Officer, but there is a fundamental disability in the candidate to stand for election at all. The English law after the passing of the Ballot Act of 1872 is substantially the same as has been explained in the case of Stowe *v.* Jolliffe†. The register which corresponds to our electoral roll is regarded as conclusive except in cases where persons are prohibited from voting by any statute or by the common law of Parliament.

It is argued on behalf of the respondent that the expression "non-compliance" as used in sub-section (2)(c) would suggest the idea of not acting according to any rule or command and that the expression is not quite appropriate in describing a mere lack of qualification. This, we think, would be a narrow way of looking at the thing. When a person is incapable of being chosen as a member of a State Assembly under the provisions of the Constitution itself but has nevertheless been returned as such at an election, it can be said without impropriety that there has been non-compliance with the provisions of the Constitution materially affected the result of the election. There is no material difference between "non-compliance" and "non-observance" or "breach" and this item in clause (c) of sub-section (2) may be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause. When a person is not qualified to be elected a member, there can be no doubt that the Election Tribunal has got to declare his election to be void. Under section 98 of the Act this is one of the orders which the Election Tribunal is competent to make. If it is said that section 100 of the Act enumerates exhaustively the grounds on which an election could be held void either as a whole or with regard to the returned candidate, we think that it would be a correct view to take that

†9 C.P. 734.

in the case of a candidate who is constitutionally incapable of being returned as a member there is non-compliance with the provisions of the Constitution in the holding of the election and as such sub-section (2)(c) of section 100 of the Act applies. The result therefore is that in our opinion the contention of the appellant succeeds. We allow the appeal in part and modify the order of the Election Tribunal to this extent that the election of respondent No. 2 Vasant Rao only is declared to be void; the election of the appellant however will stand. We make no order as to costs of this appeal.

(Sd.) MEHR CHAND MAHAJAN C.J.
(Sd.) B. K. MUKHERJEA J.
(Sd.) VIVIAN BOSE J.
(Sd.) N. H. BHAGAVATI J.
(Sd.) T. L. VENKATARAMA AYYAR J.

The 19th May 1954.

[No. 19/266/52-Elec.III/13507.]

By Order,
K. S. RAJAGOPALAN, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954